

IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE – NW/S Cross Road,
2191.48' NE of Chapel Road
(9534 Cross Road)
11th Election District
7th Council District

Ermanno Florio
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Cases Nos. 99-331-SPH & 01-205-A

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed separately by the owner of the subject property, Ermanno Florio. Specifically, in February 1999, the Petitioner filed for special hearing relief under Case No. 99-331-SPH seeking approval of 19 authorizations (building permits) in the Belair Road Sub-area of the Honeygo District, due to the availability of existing public water and sewer facilities to the subject site. At the public hearing held on April 7, 1999, Mario (Ermanno) and Lois Florio, property owners, appeared, as did Newton A. Williams, Esquire, attorney for the Petitioner. Appearing as interested persons were Robert Lund, a nearby resident, and John R. Clark, owner of property in a neighboring subdivision, and his attorney, Ronald A. Decker, Esquire. Subsequent to the hearing, written comments were received from the Office of Planning, through the County's Office of Law, wherein certain issues were raised and objections expressed in opposition to the Petitioners' request. Specifically, those comments opined that this Zoning Commissioner was prohibited from granting the relief requested in the form presented. Due to the lengthy exchange of correspondence that followed regarding this issue, an opinion was not rendered in Case No. 99-331-SPH.

Subsequently, realizing the legal roadblocks presented by his Petition for Special Hearing, Mr. Florio requested relief in an alternate form through the Petition for Variance filed in November, 2000 in Case No. 01-205-A. Under Case No. 01-205-A, the Petitioner seeks relief

Date

By

For the purposes of infrastructure, the Honeygo District was divided into four sub-areas; namely, the Belair Road, Honeygo, Bird River, and Bean Run sub-areas. Additionally, the regulations contained within Section 259 of the B.C.Z.R. created a limited number of "authorizations" which could be issued to prospective developers by the Director of the Department of Permits and Development Management (DPDM). By limiting the number of authorizations available, the regulations intend to insure that the infrastructure is in place before development occurs.

As noted above, the subject property is located in the Belair Road sub-area. At this time, there are no authorizations available to this area. Thus, by law, the Petitioner's project has been placed on "hold." Nonetheless, testimony and evidence presented shows that the subject property abuts an adjoining development, known as Perry Hall Farms, and that public sewer exists in front of the Florio property in the form of an 8-inch sanitary sewer. Moreover, although the property is located in the Belair Road sub-area, it is not dependent on the completion of the infrastructure therein, because of the availability of existing improvements which were constructed as a result of the development of Perry Hall Farms. Similarly, a 12-inch water main is located in the bed of Cross Road, along the frontage of the Florio property.

As noted above, the Petitioner originally sought relief through the Petition for Special Hearing filed in Case No. 99-331-SPH, seeking approval of "19 authorizations in the Belair Road sub-area...due to the fact that water and sewer are available to the site." As a result of the legal roadblocks presented by that Petition, Mr. Florio requested relief in an alternate form through the Petition for Variance filed in Case No. 01-205-A. In that matter, the Petitioner requests variance relief from Section 259.7.S of the B.C.Z.R. That Section governs sewer connections and allows the Director of DPDM to authorize connections to completed sewer interceptors in certain circumstances. Moreover, the Petitioner seeks relief, pursuant to Section 259.8 of the B.C.Z.R., which allows the Zoning Commissioner to variance the requirements of Section 259.7 thereof. Such variances shall be granted after the application of those standards established in Section 4A02.4.F of the B.C.Z.R.

Date 1/24/11
By [Signature]

Although the Office of Planning and the Office of Law raised certain concerns and objections to the grant of the special hearing relief, it is to be noted that the Office of Planning supports the Petitioner's request for variance relief in Case No. 01-205-A. Within its Zoning Advisory Committee (ZAC) comments offered in this case, the Office of Planning, "...supports the request to permit sewer connections from the Belair Road sub-area to a sewer interceptor in a different sub-area and to consolidate the above variance with Case No. 99-331-SPH." The Department of Public Works concurs. Through the Development Plans Review division of the Department of Permits and Development Management (DPDM), the Department of Public Works agrees that "...sewering the Florio property in the directions (sic) of the Bean Run sub-area is the best way. It will save the County from extending the 8-inch diameter sewer in Honeygo Boulevard."

Section 4A02.4.F of the B.C.Z.R. requires a finding that; 1) the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal; and, 2) that the granting of the Petition will not adversely affect the person whose application was filed prior to the Petitioner's application, in accordance with Section 4A02.3.G.2(b) of the B.C.Z.R.

Based upon the testimony and evidence offered, I am persuaded that these requirements have been met. It is clear that the demand or impact of the proposed development will be less than that assumed by the district standard in this case, inasmuch as sewer and water lines are in place. Moreover, the grant of the Petition for Variance will not adversely affect any person who had filed an application prior to the Petitioner's application. In sum, I concur with the position advanced by the Petitioner, the Office of Planning, and the Department of Public Works. The appropriate remedy in this case is to grant the Petition for Variance approving relief from the requirements of Section 259.7.S. This will allow the Developer to establish the appropriate connections to the existing improvements along the frontage of this property. Thus, the Petition for Variance shall be granted and the Petition for Special Hearing dismissed as moot.

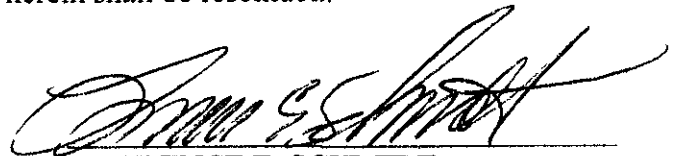
Date 1/19/11
By [Signature]

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the Petition for Special Hearing shall be dismissed as moot, and the Petition for Variance granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of January, 2001 that the Petition for Special Hearing in Case No. 99-331-SPH seeking approval of 19 authorizations (building permits) in the Belair Road Sub-area of the Honeygo District, due to the availability of existing public water and sewer facilities to the subject site, be and is hereby DISMISSED AS MOOT; and,

IT IS FURTHER ORDERED that the Petition for Variance in Case No. 01-205-A seeking relief from Section 259.7.S of the Baltimore County Zoning Regulations (B.C.Z.R.), pursuant to Section 259.8 thereof, to permit sewer connections from the Belair Road Sub-area to a sewer interceptor in a different sub-area (Bean Run), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 1/24/01
By [Signature]



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

January 24, 2001

Mr. Ermanno Florio
4030 North Point Boulevard
Baltimore, Maryland 21222

RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE
NW/S Cross Road, 2,191.48' NE of Chapel Road
(9534 Cross Road)
11th Election District – 7th Council District
Ermanno Florio - Petitioner
Cases Nos. 99-331-SPH and 01-205-A

Dear Mr. Florio:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been dismissed as moot, and the Petition for Variance granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. John R. Clark
2820 Reckord Road, Fallston, Md. 21047
Ronald Decker, Esquire
4111 E. Joppa Road, Suite 201, Baltimore, Md. 21236
Office of Law; Office of Planning; DPW; People's Counsel; Case File

Come visit the County's Website at www.co.ba.md.us



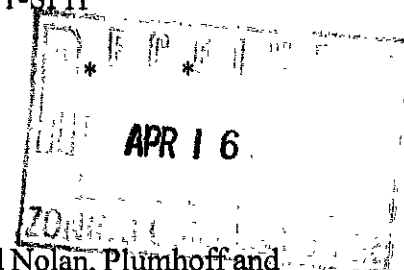
Printed with Soybean Ink
on Recycled Paper

9534 CROSS ROAD
NW/S CROSS ROAD,
2200' NE OF CENTERLINE CHAPEL ROAD
11TH ELECTION DISTRICT -
5TH COUNCILMANIC DISTRICT
LEGAL OWNER: ERMANNO FLORIO

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
Case No.: 99-331-SPH

* * * * *

**PETITIONER'S MEMORANDUM IN
SUPPORT OF SPECIAL HEARING**



Mario Florio, legal owner and petitioner, by Newton A. Williams, and Nolan, Plumhoff and Williams, Chtd., his attorneys, offers this Memorandum of Law in Support of Mr. Florio's hearing request.

STATEMENT OF THE CASE

In Case No. 99-331-SPH, Mr. Florio, the owner of an 8.0 acre parcel located on the northwest side of Cross Road, northeast of Chapel Road, has requested the approval of 19 authorizations from the Belair Road Subarea of the Honeygo District "due to the fact that water and sewer are available to the site." On Wednesday, April 7, 1999, a hearing was held before Zoning Commissioner Schmidt, which was properly advertised and posted. No protestants appeared at the hearing, although there were interested parties in the audience.

On the day of the hearing, the Office of Law filed a Memorandum in the form of a 3-page memo from Virginia W. Barnhart, Esquire and Douglas Silber, Esquire, County Attorney and Assistant County Attorney respectively, directed to Arnold F. Pat Keller, III, the Director of Planning, dated April 5, 1999.

STATEMENT OF THE FACTS

Honeygo Growth Area is unique in Baltimore County Zoning in that under Sections 259, of the Baltimore County Zoning Regulations, it is subject to an H & H1 overlay district, and it is also

subject to certain requirements with regard to water, sewer and other public infrastructure, contained in Sections 295.5 to 259.9.(BCZR).

DISCUSSION

First of all, it is Hornbook law to say that zoning regulations and other regulations are in derogation of common law property rights, and as such should be interpreted strictly, and not unnecessarily broadened. It should be interpreted according to its intent and plain statutory language. There is no right nor reason to impede the Florio 19 lot project, unless it furthers the statutory purpose **and** unless it is covered by the plain language of the statute.

From a review of Section 259.4 through 259.7(BCZR), it becomes clear that the intent of the legislation is to insure in the Honeygo Growth Area that certain amenities, public utilities, including public roads, public sewers, public water and certain recreational facilities are in place for the community prior to large scale development. The legislation divides the community and the Honeygo Growth Area into four subareas, namely the Belair Road Subarea, and see the enclosed chart showing it to be bordered by Chapel Road to the southwest, Belair Road to the northwest, Cross Road to the southeast and Forge Road to the northeast. The Florio appears to be geographically located within this subarea, but it is not according to the clear statutory definition in Section 259.5 (BCZR).

There are three other subareas, namely the Honeygo Run subarea, which is bounded roughly by Honeygo Run to the southwest, Cross Road to the northwest, proposed Honeygo Boulevard to the northeast, and Cowenton Avenue to the southeast. There are two other subareas, namely the Bean Run subarea which lies to the northeast of Honeygo Boulevard, and the Bird River Subarea which straddles I95 south of Cowenton Avenue and southwest of Honeygo Boulevard.

The uncontradicted testimony in the case is that although the Florio property lies on the northwest side of Cross Road, it is sewerred through the Honeygo Run Subarea through the Perry Hall Farms development to the southeast. Petitioner's Exhibit 4 is an approved CRG Plan for Perry Hall Farms, dated from 1991, and this CRG Plan shows that public sewer is to be extended to serve the Florio property and several other properties along each side of Cross Road in this area.

Furthermore, Petitioner's Exhibit 4 is a comment from Bob Bowling in the Department of Public Works in the Florio property development proceedings, indicating that the property will be served by public sewer through the Perry Hall Farms development, located in the adjoining Honeygo Run Subarea.

First Argument

Mr. Florio filed this Special Hearing himself, without the benefit of counsel in the course of formulating the relief requested. However, we believe that Mr. Florio is on the right track. Our first argument is that although he is nominally located in the Belair Road subarea geographically, he is sewerred through the Honeygo Run Subarea, and, thus, he will not use and should not be required to wait for the Honeygo Run interceptor to be extended from Lolly Lane to Snyders Lane. At the time of the hearing, I stated only halfway facetiously, that since he is not dependent upon this sewer, he should not be required to wait for it; and that the Council might have as well said that when repairs are completed on the Statue of Liberty, that development can then commence on the Florio Property. If he does not need the sewer, if he will not use the sewer, why should he be required as a condition precedent to have the sewer built? He should not be so required, since it has no effect upon this property.

Second Argument

The Florio property may not be located in any subarea under the statutory definitions of Section 259.5.. **As the County Attorney points out, the Belair Road Subarea is defined as “the portion of the area where natural drainage occurs within the Honeygo Run Watershed and which is north of Chapel Road and west of Cross Road.”** See Section 259.5. It is very interesting to note that the County Attorney herself in her Memorandum, noted that this definition is in the conjunctive, that is the requirements to be within the subarea require at least two facts to be present, including natural drainage within the Honeygo Run Watershed **and** location north of Chapel Road and west of Cross Road. While the Florio property is in fact located north of Chapel Road and west of Cross Road, it is evident by the fact that as early as 1991 it was so recognized, that its natural sewer drainage apparently may not occur within the Honeygo Run Watershed. Or the Florio Property may be sewerable from two different ways, ie from Perry Hall Farms in a different subarea and from a part of the Honeygo Run Interceptor which may never reach the Florio Property. As such, the Florio property should be interpreted as not being subject to any Honeygo Run requirement, and the Florio Property should be found to be not in need of sewer authorizations. In the alternative, if the Commissioner is so disposed, the Commissioner can adopt the first position, and recommend to the Director of Permits and Development Management, that since Mr. Florio does not need the sewer the 19 authorizations should be granted. As note at the Hearing, the Florio Property is not in the adjoining Honeygo Run Subarea, and it is not subject to the commencement of the three road projects and other infrastructure requirements of that subarea.

In the County Attorney’s Memorandum, it is stated, “for it is well settled in the case law that ‘where statutory language is plain and free from ambiguity and express a definite and sensible meaning,’ neither a court or the Zoning Commissioner ‘is at liberty to disregard the natural import

of words with a view toward making the statue express an intention which is different from its plain meaning.” Citing *Tidewater/Havre de Grace, Inc. v. Mayor and City Council*, 337, Md. 338, 345 (1995).

The statutory definition in 259.5 is clear. In order to be in the subarea, the subject property must not only be north of Chapel Road and west of Cross Road, but as well it must lie within the natural drainage area of the Honeygo Run Watershed. The Florio property does not lie in this **sewer** drainage area (since it is soon slated to obtain its sewer from the adjoining Honeygo Run Subarea,) the vital, required second factor under the statutory definition.

At the hearing Commissioner Schmidt asked counsel if this first reading and argument was merely a cute evasion of the statute, and I do not believe it is. Furthermore, as to the same question, the answer is clearly no as to this second argument, the area may not be covered in any natural **sewer** or it may be located in two natural drainage **sewer** drainage subareas, and no harm is done since the Property does not need the Honeygo Run Interceptor in any case.

CONCLUSION

It is respectfully submitted that the Commissioner should find, pursuant to the posted and advertised hearing, alternatively that Mr. Florio does not need the Honeygo Run Interceptor, and thus the 19 authorizations should be granted; or in the alternative, that the Florio property does not lie within the statutorily defined natural **sewer** drainage subarea area of the Belair Road subarea, nor in any other Honeygo Subarea or in two subareas, and thus is not covered by, or subject to the statute

Respectfully submitted,


Newton A. Williams

Nolan, Plumhoff and Williams, Chartered

700 Nottingham Center
500 Washington Avenue
Towson, Maryland 21204

Certificate of Mailing

I hereby certify this 16th day of April, 1999, that the foregoing Memorandum was mailed to Virginia W. Barnhart, Esq. , County Attorney and to Douglas N. Silber, Esq., Assistant County Attorney, Court House, Towson, Maryland 21204, and to Peter Zimmerman, Esq. Peoples Counsel and to Carol S. DeMilio, Esq., Deputy Peoples Counsel, Court House, Towson, Maryland 21204.


Newton A Williams



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 9534 Cross Road
Perry Hall, Md. 21236
which is presently zoned DR-3-5 HoneyGo Dist

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

19 AUTHORIZATIONS IN THE BELAIR ROAD SUBAREA
OF THE HONEYGO DISTRICT DUE TO THE FACT
THAT WATER & SEWER ARE AVAILABLE
TO THE SITE.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print _____
Signature _____
Address _____ Telephone No. _____
City _____ State _____ Zip Code _____

Attorney For Petitioner:

Name - Type or Print _____
Signature _____
Company _____
Address _____ Telephone No. _____
State _____ Zip Code _____

Legal Owner(s):

Ermanno Florio
Name - Type or Print _____
Signature _____
Name - Type or Print _____
Signature _____
4030 North Pt. Blvd. 410-477-2050
Address _____ Telephone No. _____
Baltimore, Md. , 21222
City _____ State _____ Zip Code _____

Representative to be Contacted:

Ermanno Florio
Name _____
4030 North Pt. Blvd. 410-477-2050
Address _____ Telephone No. _____
Balto., Md. 21222
City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2-3 hr

UNAVAILABLE FOR HEARING N/A

Reviewed By mjk Date 2/24/99

Case No. 99-331-SPH

Date 2/24/98
By [Signature]

ORDER RECEIVED FOR FILING



**Zoning Description
Florio Property
7.97 Acre Parcel
11th Election District
Baltimore County, Maryland**

Beginning for the same at a point in the center of Cross Road, said point being distant North 43 degrees 20 minutes 28 seconds East 2191.48 feet from the intersection of the northeasterly right of way line of Chapel Road and the centerline of Cross Road, said point also being the same point of beginning as in a deed dated April 14, 1993, and recorded among the Land Records of Baltimore County, Maryland in Liber S.M. 9714 at Folio 581; thence leaving said centerline and binding on a tract of land now or formerly owned by Leroy C. Laudenklos and Wife and recorded among the Land Records of Baltimore County, Maryland G.L.B. 3150 at Folio 7

1) North 49 degrees 35 minutes 22 seconds West 882.75 feet; thence leaving said line and binding on a tract of land now or formerly owned by Paul P. Ragonese et. al. and recorded among the Land Records of Baltimore County, Maryland in Liber S.M. 10249 at Folio 368

2) North 44 degrees 13 minutes 22 seconds East 400.12 feet; thence still binding on said tract of land in part and also binding on a tract of land now or formerly owned by Sandra Jo. Clay and Mary Rose Campeggi and recorded among the Land Records of Baltimore County, Maryland S.M. 9714 at Folio 581

3) South 48 degrees 57 minutes 59 seconds East 876.15 feet to intersect the aforesaid centerline of Cross Street; thence binding on said centerline

4) South 43 degrees 20 minutes 28 seconds West 390.22 to the point of beginning
Containing 347019 square feet or 7.967 acres of land more or less

Being all of same tract of land as in a deed between the Estate of Milton B. Schott Sr. and Ermanno Florio and recorded among the Land Records of Baltimore County, Maryland in Liber S.M. 8335 at Folio 308

99-331-SPH

331

**NOTICE OF ZONING
HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #99-331-SPH
9534 Cross Road
NW/S Cross Road, 2200' NE
of centerline Chapel Road
11th Election District
5th Councilmanic District
Legal Owner(s): Ermanno
Florio

Special Hearing: to approve
19 authorizations in the Belair
Road subarea of the Honeygo
District due to the fact that wa-
ter and sewer are available to
the site.

Hearing: Wednesday, April
7, 1999 at 2:00 p.m. in
Room 108, County Office
Building, 111 West Chesapeake
Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible; for
special accommodations
Please Contact the Zoning
Commissioner's Office at
(410) 887-4388.

(2) For information concern-
ing the file and/or hearing,
Contact the Zoning Review Of-
fice at (410) 887-3391.

3/310 March 18 C298159

CERTIFICATE OF PUBLICATION

TOWSON, MD., 3/18/, 1999

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper published
in Towson, Baltimore County, Md., once in each of 1 successive
weeks, the first publication appearing on 3/18/, 1999.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 062304

DATE 2/24/99 ACCOUNT 01-615
Item 331
By MJK
AMOUNT \$ 650.00

RECEIVED FROM: Ermanno Florio - 9534 Cross Road

FOR: Spent Hwy - 19 1/2 (070) - \$650.00

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

PROCESSED ACTUAL TIME
2/24/1999 2/24/1999 10:50 AM
RECEIVED BY CASHIER PMS PER SPENDER
IS MISCELLANEOUS CASH RECEIPT
Revised # 076400
CR NO. 062304

650.00 CHECK
Baltimore County, Maryland

99-331-SPH

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: CASE # 99-331-SPH
PETITIONER/DEVELOPER:
(Ermanno Florio)
DATE OF Hearing
(APR. 7, 1999)

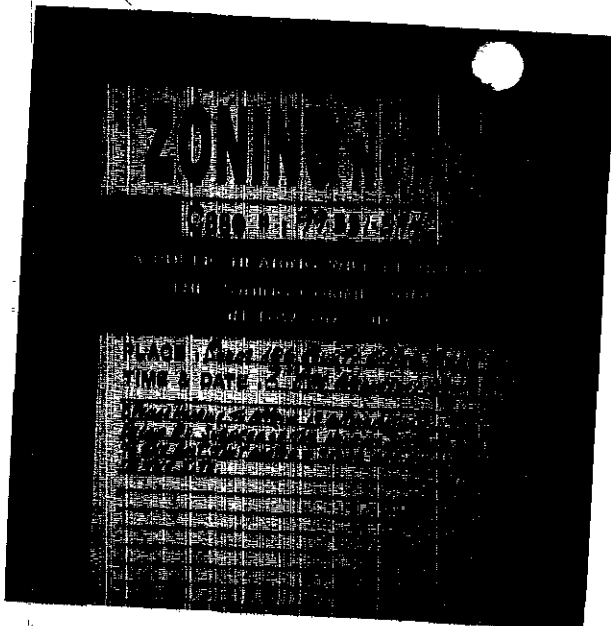
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Ave.
Towson, Maryland 21204

ATTENTION : MS. GWENDOLYN STEPHENS

LADIES AND GENTLEMEN:

This letter is to certify under the penalties of perjury that the necessary
sign(s) required by law were posted conspicuously on the property located at
9534 Cross Road Baltimore, Maryland 21128_____

The sign(s) were posted on _____ 3-23-99 _____
(, Day, Year)



Sincerely,


(Signature of Sign-Poster & Date)

____ Thomas P. Ogle, Sr. _____

____ 325 Nicholson Road _____

____ Baltimore, Maryland 21221 _____

____ (410)-687-8405 _____
(Telephone Number)

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 99-331-SPH

Petitioner: Ermanno Florio

Address or Location: 9534 Cross Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Ermanno Florio

Address: 4030 North Point Blvd.
Balto. MD. 21222

Telephone Number: (410) 477-2050

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____

Format for Sign Printing, Black Letters on White Background:

Item 331

ZONING NOTICE

Case No.: 99-331-SPH

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: Special Hearing to approve 19 authorizations
in the Belair Road Subarea of the Honeygo District
Due to the fact that water and sewer are available
to the site

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: March 17, 1999

TO: Larry E. Schmidt
Zoning Commissioner

FROM: James H. Thompson - CF
Code Enforcement Supervisor

SUBJECT: ITEM NO.: 331
PETITIONER: Ermanno Florio

VIOLATION CASE NO.: 98-4321

LOCATION OF VIOLATION: NW/S of Cross Road, 2200' NE centerline
Chapel Road (9534 Cross Road)
11th Election District

DEFENDANT(S): Ermanno Florio

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s):

<u>NAME</u>	<u>ADDRESS</u>
Marlene Davis	9815 Richlyn Drive Perry Hall, Maryland 21128

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Code Enforcement Supervisor, so that the appropriate action may be taken relative to the violation case.

JHT/cf/lmh

*Copy of Hearing Notice
sent to Marlene Davis
on 3/17/99 scj*

TO: PATUXENT PUBLISHING COMPANY
March 18, 1999 Issue – Jeffersonian

Please forward billing to:

Ermanno Florio
4030 North Point Boulevard
Baltimore, MD 21222

410-477-2050

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 99-331-SPH

9534 Cross Road

NW/S Cross Road, 2200' NE of centerline Chapel Road

11th Election District – 5th Councilmanic District

Legal Owner: Ermanno Florio

Special Hearing to approve 19 authorizations in the Belair Road subarea of the Honeygo District due to the fact that water and sewer are available to the site.

HEARING: Wednesday, April 7, 1999 at 2:00 p.m. in Room 106, County Office Building, 111 West Chesapeake Avenue



LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

March 5, 1999

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 99-331-SPH
9534 Cross Road
NW/S Cross Road, 2200' NE of centerline Chapel Road
11th Election District – 5th Councilmanic District
Legal Owner: Ermanno Florio

Special Hearing to approve 19 authorizations in the Belair Road subarea of the Honeygo District due to the fact that water and sewer are available to the site.

HEARING: Wednesday, April 7, 1999 at 2:00 p.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

c: Ermanno Florio

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MARCH 23, 1999.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Come visit the County's Website at www.co.ba.md.us



Printed with Soybean Ink
on Recycled Paper



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

April 1, 1999

Mr. Ermanno Florio
4030 North Point Blvd.
Baltimore, MD 21222

RE: Case No.: 99-331-SPH
Petitioner: Ermanno Florio
Location: 9534 Cross Road

Dear Mr. Florio:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on February 24, 1999.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in cursive script, reading "W. Carl Richards, Jr.", followed by a stylized flourish.

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures

Come visit the County's Website at www.co.ba.md.us



BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

Date: March 23, 1999

TO: Arnold Jablon
FROM: R. Bruce Seeley *RB/JS*
SUBJECT: Zoning Item #331

Florio Property - 9534 Cross Road

Zoning Advisory Committee Meeting of March 8, 1999

- The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.
- The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.
- X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:
- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
- Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).
-

B A L T I M O R E C O U N T Y, M A R Y L A N D

I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director
 Department of Permits & Development
 Management

Date: March 19, 1999

FROM: Robert W. Bowling, Supervisor
 Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
 for March 15, 1999
 Item No. 331

The Bureau of Development Plans Review has reviewed the subject zoning item. The sewer design drawings for Perry Hall Farms Section Three are not yet approved. Therefore this site, Florio Property, still will not have access to the proposed off-site sanitary sewer.

RWB:HJO:jrb

cc: File

ZONE0315.331



Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

March 11, 1999

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF MARCH 8, 1999

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

THE FIRE DEPARTMENT HAS NO COMMENTS REGARDING THE FOLLOWING ITEMS:

331 332, 333, AND 335

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4831, MS-1102F

cc: File

Come visit the County's Website at www.co.ba.md.us



Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 3.3.99

Ms. Gwen Stephens
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 331

MSK

Dear Ms Stephens:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: April 7, 1999

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 9534 Cross Road

INFORMATION:

Item Number: 331

Petitioner: Ermanno Florio

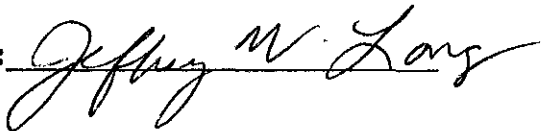
Zoning: DR 3.5H

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATION:

The Office of Planning requested advice from the Law Office regarding the subject Petition for Special Hearing. This office concurs with the information provided in Virginia W. Barnhart's memorandum, dated April 6, 1999 (see attached). In addition, the Office of Planning believes that the spirit and intent of the Honeygo Plan and the Baltimore County Zoning Regulations would be violated if the applicant's request were granted.

Section Chief:



AFK/JL:

BALTIMORE COUNTY, MARYLAND

**OFFICE OF LAW
INTER-OFFICE CORRESPONDENCE**

April 6, 1999

TO: Arnold F. 'Pat' Keller, III
Director, Office of Planning

THROUGH: John M. Wasilisin
Administrative Officer

FROM: Virginia W. Barnhart *VWB/bu*
County Attorney

Douglas Silber *DS*
Assistant County Attorney

RE: Request for Advice:
Special Hearing- Honeygo

Mr. Ermanno Florio, the owner of a 7.967 acre parcel, zoned DR-3.5H, has requested a special hearing before the Zoning Commissioner, wherein he is requesting that 19 authorizations in the Belair Road subarea be issued for his proposed development. Your memorandum of March 25, 1999, indicates that the subject property is located within the Belair Road Sub-Area of Honeygo, but could be physically sewerred, by a gravity sewer system, to the existing sewer system that services the adjacent Bean Run Sub-Area. You have asked this office to provide advice concerning whether a Petition for Special Hearing is the appropriate mechanism for addressing the issue of the issuance of authorizations for the subject property.

First, it is important to review the legislatively set parameters concerning the issuances of authorizations¹ in the Honeygo Area and its sub-areas pursuant to §259.4 *et seq.* of the Zoning Regulations (hereinafter the "Honeygo Regulations"). The statement of legislative intent in §259.4 includes, *inter alia*, that "[t]he [Honeygo] area is created to ensure that the development of infrastructure will coincide with the approval of building permits."² The Honeygo Regulations

¹ An "authorization" is defined in §259.5 as "the approval, by the Director of the Department of Permits and Development Management (PDM), to apply for a residential building permit on any land in the area."

² From an overview of the threshold limits for the Honeygo Area as a whole, and for each Sub-Area, which are outlined in §259.7, it is clear the focus on "infrastructure" included more than just water and sewer; it embraces certain capital road projects, parkland acquisition, classroom capacity, and recreational facilities.

proceed to set out certain legislatively dictated minimum threshold infrastructure criteria, which must be satisfied before the executive branch, through the Director of Permits and Development Management (the "Director") is allowed to issue authorizations. By carefully prescribing these minimum threshold criteria, the County Council has sought to ensure that its stated legislative intent be carried out by the county agencies charged with processing and permitting residential development to proceed in the Honeygo area.

Section 259.7 sets out these threshold limits, not only for the Honeygo area as a whole, but also for each sub-area. Unless the subject property qualifies for the exemption set forth in §259.7. C, the Director may not (i.e. has no power to) issue authorizations unless the prescribed threshold criteria for the area or sub-area, as the case may be, are satisfied. Section 259.7 D authorizes the Director to issue up to 400 authorizations for the area as a whole if the criteria set out therein are satisfied. Your office has advised that the four prescribed criteria (set out in §259.7 D.1) are satisfied, but also that all of the 400 authorizations have been issued for other properties, such that none are available to be issued to the Mr. Florio for the subject property.

Thus, we look next to whether the Director may issue authorizations for the sub-area in which the subject property is located, which in this case is the Belair Road sub-area. Section 259.7 E.4 outlines the threshold limits for the Belair Road sub-area. Under subsection 4.a, the Honeygo Regulations unambiguously state that the Director may not issue any authorizations in the Belair Road sub-area "prior to the commencement of the Honeygo Run sewer interceptor capital project."

Although it is not defined in this subsection, the term "Honeygo Run sewer interceptor capital project" is defined earlier in §259.7 E.2.a as extending "from the Bird River pumping station to Snyder's Lane." We have been advised both by your office and by the Department of Public Works that, as of this date, while plans have been approved for one portion of this sewer interceptor (from the Bird River pumping station to Lolly Lane), right-of-way has not yet been cleared, the county has not advertized for sealed bids from prospective contractors and, obviously, no construction contract has been approved .

Clearly, therefore, the Honeygo Run sewer interceptor capital project has not yet been commenced. Accordingly, under the unambiguous language of 259.7 E.4.a, the Director may not issue any authorizations in the Belair Road sub-area.

Nor may the Director issue authorizations as if Mr. Florio's property was located in the Bean Run sub-area. Even though he may be able to physically sewer his property by gravity sewer connected to a sewer interceptor in the Bean Run sub-area, Mr. Florio's property is within a defined geographic area. The Belair Road sub-area is defined in §259.5 as the "portion of the area where *natural* drainage occurs within the Honeygo Run watershed *and* which is north of Chapel Road and west of Cross Road. Thus, even though access to another sewer service sub-area is physically possible, this fact does not change the legal location of the subject property

within the Belair Road sub-area.³

Thus, with the assumption that no authorizations may be issued by the Director for the subject property at this point in time, the remaining issue is whether the Zoning Commissioner has authority to grant any relief to Mr. Florio by way of a special hearing. The Zoning Commissioner's powers are set forth in Section 500 of the Zoning Regulations. As the issue does not concern a petition for classification or reclassification or for special exceptions, the only provisions which are relevant are subsections 500.6 and 500.7⁴. The former subsection provides, in pertinent part:

In addition to his aforesaid powers, the Zoning Commissioner shall have the power . . . to conduct hearings involving . . . *the proper interpretation* [of the Zoning Regulations] . . . and to pass his order thereon, subject to the right of appeal to the County Board of Appeals as hereinafter provided. (Emphasis added).

The latter subsection provides, in pertinent part:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice *to determine any rights whatsoever of such person in any property* in Baltimore County insofar as they are affected by these regulations. (Emphasis added).

From the above quoted provisions, with specific attention placed on the italicized phrases, it is clear that, in cases where the zoning regulations are *ambiguous and susceptible of different interpretations*, upon proper petition, and after advertisement and notice, the Zoning Commissioner may, by special hearing, determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations. Where, however, the zoning regulation(s) in question are *not ambiguous*, and the legislative intent is clear, the Zoning Commissioner has nothing to interpret and would be constrained only to confirm what

³ Moreover, even if the Honeygo Regulations provided for flexibility from the stringent geographic sub-area boundaries, which they clearly do not, we have been advised by the Director's office that there are currently no authorizations available in the Bean Run sub-area. Those that were previously made available have already been issued to other property owners within that sub-area.

⁴Section 500.7 also distinguishes between petitions for special hearings, such as the proceeding at issue, and petitions for special exceptions, variances and reclassifications.

the zoning regulations clearly provide. For it is well settled in the case law that "where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning," neither a court nor the Zoning Commissioner "is at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning." *Tidewater/Havre de Grace, Inc. v. Mayor and City Council*, 337 Md. 338, 345 (1995).

As we have discussed earlier, the County Council's intent as to when and under what conditions authorizations may be issued for properties in the Honeygo area is plain and free from ambiguity. Thus, in our view, the Zoning Commissioner would be constrained in this proceeding, which is a result of a petition for a special hearing, as opposed to a petition for a variance, special exception or reclassification, to merely confirm that no authorizations may be issued at this time for residential development on the Florio property. Like all other owners of properties located within the Belair Road sub-area, he must wait until the "commencement of the Honeygo Run sewer interceptor capital project," after which 200 authorizations will be made available which the Director may *at that time* issue. See §259.7 E.4.b.

Should you have any questions, please contact us.

VWB:DNS:n

cc: Arnold Jablon
Thomas J. Peddicord, Jr.
Lawrence E. Schmidt

✓

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Don
AFK

TO: Virginia Barnhart, County Attorney

DATE: March 25, 1999

Arnold F. 'Pat' Keller, III
FROM: Director, Office of Planning

SUBJECT: Special Hearing - Honeygo

Mr. Ermanno Florio, the owner of a 7.967 acre parcel, zoned DR-3.5 H, has requested a special hearing before the Zoning Commissioner. Mr. Florio is requesting (see attached petition) 19 authorizations (allows applicant to obtain building permits) from the Bean Run Sub Area (where sewer currently exists) even though Mr. Florio's property is located within the Belair Road Sub Area (where sewer does not exist). Mr. Florio's property could be served by the Bean Run Sub Area through the use of a gravity system.

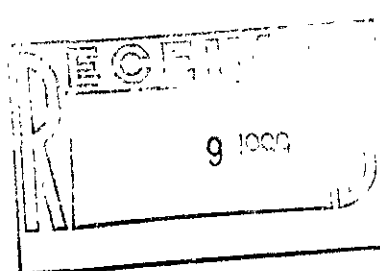
Section 259.8 of the Baltimore County Zoning Regulations, outlines the parameters for granting variances to the basic services provisions of the Honeygo Overlay District. The Office of Planning is currently in the process of formulating a recommendation to the Zoning Commissioner for this petition. Please advise staff as to whether the Petition for Special Hearing is the appropriate mechanism for addressing this issue. Thank you for your assistance with this matter.

Pat Keller

Arnold F. 'Pat' Keller, III

AFK:bjs

Attachment



RE: PETITION FOR SPECIAL HEARING
9534 Cross Road, NW/S of Cross Rd,
2200' NE c/I Chapel Rd, 11th Election
District, 5th Councilmanic

Legal Owners: Ermanno Florio

Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case Number: 99-331-SPH

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates of other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 1999, a copy of the foregoing Entry of Appearance was mailed to Legal Owner Ermanno Florio, 4030 North Point Blvd., Baltimore, MD 21222, Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

**THE FLORIO PROPERTY
APPROVED DEVELOPMENT PLAN
XI -735**

**REASONS IN SUPPORT OF ALLOWANCE OF
PHASE II PROCESSING TO RECORD PLAT
AND
ALLOCATION OF 19 AUTHORIZATIONS
FOR SEWER CONNECTIONS**

The Florio Property should be allowed to proceed to be processed through Phase II of the Development Process and for the following reasons, namely:

1. The Hearing Officer, granted approval of the Development Plan by KCI on March 14, 1996, and a copy of that Opinion and Development Plan Order is attached hereto and incorporated by reference herein, as Petitioner's **Exhibit No.1**.

2. That the HOH opinion and Order reflects the dependence of this Development Plan upon adjacent Perry Hall Farms, see Page 2 thereof. **THAT THE FLORIO PROPERTY SINCE 1991 HAS BEEN PLANNED TO USE , AND HAS BEEN REQUIRED TO USE THE SEWER PROVIDED BY PERRY HALL FARMS, SEE THE APPROVED PERRY HALL FARMS CRG PLAN.**

3. That the Honeygo Area is governed by the provisions of the Baltimore County Zoning Regulations, including Section 259.7 D. 1. cited by Mitchell J. Kellman in his PDM letter of February 1, 1999 ,to Mr Florio in response to the Florio letter of January 26, 1999, and a copy of both letters are attached hereto as Petitioner's **Exhibits Nos. 2 and 3**.

4. That Section 26-210 of the Baltimore County Code (1988 Ed. and supp. thereto) provides for a five (5) year life for approved Developments Plans, i.e., Plan Approval, and thus this Plan will expire if not extended prior to March 14, 2001. **Thus, extension is hereby sought pursuant to subsection (b) of Section 26-210.**

5. That the purposes of the limited authorization scheme with rationing of authorizations in the Honeygo Area are several in nature. Section 259.4 provides in part, that "The area is created to ensure that the development of infrastructure will coincide with the approval of building permits." That both public water and public and sewer are available to the Florio Property. **THE INFRASTRUCTURE IS ALL IN PLACE FOR FLORIO.**

6. That the adjoining Development of Perry Hall Farms has provided a public sewer in front of the Florio Property in the form of an eight(8) inch sanitary sewer.

7. That the Property is in the Belair Road Honeygo subarea, but it is not dependent upon the Honeygo Run sewer interceptor project, because it has the eight inch sanitary sewer available in

front of the Property as shown on the KCI Plan and the approved CRG Plan for Perry Hall Farms.

8. Mr. Kellman's letter states that we must record our plat and the Honeygo Run sewer interceptor project must commence prior to any authorizations being issued in the Belair Road Subarea. **HOWEVER, ALTHOUGH THE FLORIO PROPERTY IS IN THE BELAIR ROAD SUBAREA, IT IS NOT DEPENDENT UPON OR SEWERED BY THE HONEYGO RUN INTERCEPTOR.**

9. Mr. Florio seeks assurance that if he records a Plat for the Property that he will be able to sell his small number of lots and the purchasers obtain building permit allocations..

10. That Mr. Florio has owned the property since 1989, and he is not a speculator.

11. That public water is available to the Florio Property in a **12 inch water main in the bed of Cross Road in front of the property.**

12. That it is manifestly unfair to allow a single project to use and reserve all 800 units in this subarea. This is particularly so when a high rate of absorption is 100 units per year, namely eight years of reservation. **IN FACT THE ALLOCATION RESERVOIR OF 400 UNITS WAS AND IS NOT AVAILABLE TO FLORIO BECAUSE IT IS NOT IN THE HONEYGO RUN SUBAREA.**

13. The Florio Property is only a 19 lot subdivision, less than 3 per cent of the 800 units for Perry Hall Farms across the Street. Furthermore, Perry Hall Farms is in a different subarea than the Belair Road subarea.

14. That the Belair Road subarea is dependent upon the Honeygo Interceptor, and this sewer is some years away from construction. The proposed Interceptor is 3000 feet away from the planed route at Snyder Lane. **THE FLORIO PROPERTY WILL NOT USE OR NEED THE HONEYGO RUN INTERCEPTOR.**



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

June 30, 1999

Newton A. Williams, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Towson, Maryland 21204

Douglas Silber, Esquire
Assistant County Attorney
Baltimore County Office of Law
Old Courthouse Mezzanine
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
9534 Cross Road (Perry Hall Farms)
Case No. 99-331-SPH

Dear Counsel:

By way of background, each of you know that the above-captioned matter came before me on April 7, 1999 for consideration of a Petition for Special Hearing filed by the owner of the subject property, Ermanno Florio. The Petitioner seeks approval by this Zoning Commissioner of the issuance of 19 authorizations in the Belair Road Sub Area of the Honeygo Run District for the subject property. Mr. Florio appeared at the hearing, along with his attorney, Newton Williams, Esquire. In addition, John R. Clark, Ronald Decker, and Robert Lund appeared as interested persons. No one appeared on behalf of Baltimore County.

Subsequent to the hearing, on April 12, 1999, I received a Zoning Advisory Committee (ZAC) comment from the Office of Planning. Attached to that comment was a memorandum from the County's Office of Law directed to Arnold F. (Pat) Keller, III, dated April 6, 1999. Upon receipt of that memorandum, I advised Mr. Williams of its contents and provided him with a copy. I thought it appropriate to allow him an opportunity to respond to the memorandum. Mr. Williams responded by way of a Memorandum In Support of the Petition for Special Hearing, received April 16, 1999.

After reviewing the various memoranda as well as the record of this case comprised by the testimony and evidence offered at the public hearing, I have decided to schedule this matter for a continued hearing. I am taking a somewhat unusual step in scheduling this matter for further proceedings and hereby request that both of you appear to participate in those proceedings to protect your respective client's interests. Also, pursuant to the Zoning Commissioner's Rules of Policy and Procedure (Rule 2, Section C, 2), I will issue a subpoena to compel the attendance of Robert W. Bowling, Chief, Developer's Plans Review Division of the Department of Permits and Development Management (DPDM). I believe that reconvening these proceedings is necessary so that proper testimony and evidence can be received and this case properly considered.

Come visit the County's Website at www.co.ba.md.us



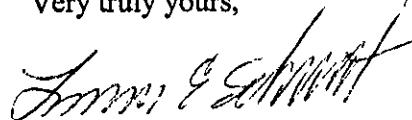
Messrs. Newton A. Williams, Esquire (NP&W) and Douglas Silber, Esquire (OL)
June 30, 1999
Page 2 (Re: Ermanno Florio Property, Case No. 99-331-SPH)

Chiefly, there are two issues about which I seek clarification. The first relates to the actual location of the property within the various sub-areas in the Honeygo District. According to Petitioner's Exhibit 3 (a document entitled "Honeygo Study Area, Development Sub Areas), the Florio property is located within the Belair Road sub-area. That is, the Florio tract is physically located on Belair Road. Notwithstanding that apparent location, testimony and evidence offered at the hearing was that public sewer would ultimately be provided to this site by way of a connection from the subdivision known as Perry Hall Farms. Apparently, Perry Hall Farms is located across the street from the Florio property, and, in part, within the Honeygo Run sub-area. Adding further to the confusion is the fact that as a condition of approval of the development plan in Case No. XI-735, a note was added thereto indicating that the property is within the Bean Run Sub-Area. Thus, there are apparently three (3) potential sub-areas involved in this case; to wit, the Belair Road Sub-area in which the property is actually located, the Honeygo Run area in which the Perry Hall Farms subdivision is located, and the Bean Run Sub-area. I think it will be helpful to me to produce Mr. Bowling to testify about this property and its relation to these three sub-areas.

A second reason for reconvening the hearing is due to the contents of Mr. Silber's memorandum. Therein, he states a number of "facts" upon which his opinions are based (e.g., there are no authorizations available in the Bean Run sub-area, the four criteria set out in Section 259.7.D.1 to enable the issuance of 400 authorizations are satisfied, etc.) Unfortunately, the record is devoid of any factual basis to substantiate these contentions.

Under the circumstances I will therefore schedule this matter for further proceedings. As we are now entering the summer vacation season, I would ask that upon receipt of this letter, Mr. Williams arrange a conference call with Mr. Silber and myself to conform calendars and chose a date when this matter can be heard.

Very truly yours,



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Ermanno Florio
4030 North Point Boulevard, Baltimore, Md. 21222
People's Counsel; Case File

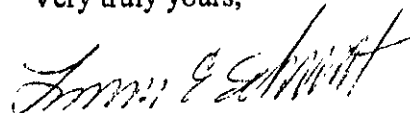
Messrs. Newton A. Williams, Esquire (NP&W) and Douglas Silber, Esquire (OL)
June 30, 1999
Page 2 (Re: Ermanno Florio Property, Case No. 99-331-SPH)

Chiefly, there are two issues about which I seek clarification. The first relates to the actual location of the property within the various sub-areas in the Honeygo District. According to Petitioner's Exhibit 3 (a document entitled "Honeygo Study Area, Development Sub Areas), the Florio property is located within the Belair Road sub-area. That is, the Florio tract is physically located on Belair Road. Notwithstanding that apparent location, testimony and evidence offered at the hearing was that public sewer would ultimately be provided to this site by way of a connection from the subdivision known as Perry Hall Farms. Apparently, Perry Hall Farms is located across the street from the Florio property, and, in part, within the Honeygo Run sub-area. Adding further to the confusion is the fact that as a condition of approval of the development plan in Case No. XI-735, a note was added thereto indicating that the property is within the Bean Run Sub-Area. Thus, there are apparently three (3) potential sub-areas involved in this case; to wit, the Belair Road Sub-area in which the property is actually located, the Honeygo Run area in which the Perry Hall Farms subdivision is located, and the Bean Run Sub-area. I think it will be helpful to me to produce Mr. Bowling to testify about this property and its relation to these three sub-areas.

A second reason for reconvening the hearing is due to the contents of Mr. Silber's memorandum. Therein, he states a number of "facts" upon which his opinions are based (e.g., there are no authorizations available in the Bean Run sub-area, the four criteria set out in Section 259.7.D.1 to enable the issuance of 400 authorizations are satisfied, etc.) Unfortunately, the record is devoid of any factual basis to substantiate these contentions.

Under the circumstances I will therefore schedule this matter for further proceedings. As we are now entering the summer vacation season, I would ask that upon receipt of this letter, Mr. Williams arrange a conference call with Mr. Silber and myself to conform calendars and chose a date when this matter can be heard.

Very truly yours,



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Ermanno Florio
4030 North Point Boulevard, Baltimore, Md. 21222
People's Counsel; Case File



Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

July 17, 2000

Newton A. Williams, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Towson, Maryland 21204

Douglas Silber, Esquire
Assistant County Attorney
Baltimore County Office of Law
Old Courthouse Mezzanine
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
9534 Cross Road (Perry Hall Farms)
Ermanno Florio - Petitioner
Case No. 99-331-SPH

Dear Counsel:

By way of background, each of you know that the above-captioned matter came before me on April 7, 1999 for consideration of a Petition for Special Hearing filed by the owner of the subject property, Ermanno Florio. The Petitioner sought approval by this Zoning Commissioner of the issuance of 19 authorizations for the subject property located in the Belair Road Sub Area of the Honeygo Run District. Mr. Florio appeared at the hearing, along with his attorney, Newton Williams, Esquire. In addition, John R. Clark, Ronald Decker, and Robert Lund appeared as interested persons. No one appeared on behalf of Baltimore County.

Subsequent to the hearing, on April 12, 1999, I received a negative Zoning Advisory Committee (ZAC) comment from the Office of Planning to which was attached a memorandum from the County's Office of Law directed to Arnold F. (Pat) Keller, III, dated April 6, 1999. Upon receipt of that memorandum, I advised Mr. Williams of its contents and provided him with a copy. I thought it appropriate to allow him an opportunity to respond to the memorandum. Mr. Williams responded by way of a Memorandum In Support of the Petition for Special Hearing, received April 16, 1999.

Rather than issuing an order in the matter, I directed a letter to each of you on June 30, 1999 in which I raised certain issues relative to the actual location of the property within the various sub-areas of the Honeygo District. Additionally, I felt that the record of the case was incomplete and suggested that the matter be scheduled for further proceedings. On July 15, 1999, Mr. Williams wrote to me in response to my letter and asked that the matter not be rescheduled for further proceedings in that Mr. Florio wanted to avoid the time and expense associated with an additional hearing. Moreover, I have not received any additional correspondence or communication from Mr. Silber since that time.

At this point, the case file remains open. I would like to resolve the pending petition in some manner, either by way of issuing a decision on the merits, dismissing the Petition for Special Hearing with or without prejudice, or scheduling the matter for further proceedings. As importantly, I draw both parties attention to two recent decisions I rendered in connection with a similar issue as

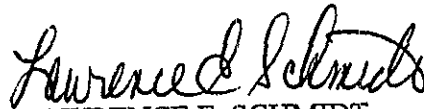


Messrs. Newton A. Williams, Esquire (NP&W) and Douglas Silber, Esquire (OL)
July 17, 2000
Page 2 (Re: Ermanno Florio Property, Case No. 99-331-SPH)

presented in the instant case. Specifically, I draw your attention to Case No. 00-161-SPHA, Petitions for Special Hearing and Variance filed by Joseph G. Holter for the residential subdivision of Lots 2, 3, 4 & 5 of Karinvale & Tract A of the Holter property. Similar issues as were presented in the Petition for Special Hearing in the instant case were considered in that case. In that matter, although I ruled that exemptions should be issued prior to the issuance of authorizations, I declined to require the Director of the Department of Permits and Development Management to correct his previous practice of issuing authorizations before exemptions. A copy of that opinion and order is attached hereto and is self-explanatory. Also enclosed is a copy of the recent decision in Case No. 00-456-A in which I granted variance relief to allow development of Lots 2, 3, 4 & 5 of Karinvale.

Under the circumstances, I would like to resolve the pending Petition and would appreciate your contacting me at your earliest convenience to advise me how you wish to proceed.

Very truly yours,



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

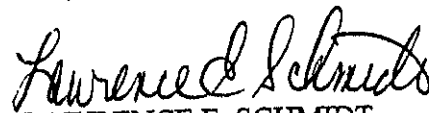
cc: Mr. Ermanno Florio
4030 North Point Boulevard, Baltimore, Md. 21222
People's Counsel; Case File

Messrs. Newton A. Williams, Esquire (NP&W) and Douglas Silber, Esquire (OL)
July 17, 2000
Page 2 (Re: Ermanno Florio Property, Case No. 99-331-SPH)

presented in the instant case. Specifically, I draw your attention to Case No. 00-161-SPHA, Petitions for Special Hearing and Variance filed by Joseph G. Holter for the residential subdivision of Lots 2, 3, 4 & 5 of Karinvale & Tract A of the Holter property. Similar issues as were presented in the Petition for Special Hearing in the instant case were considered in that case. In that matter, although I ruled that exemptions should be issued prior to the issuance of authorizations, I declined to require the Director of the Department of Permits and Development Management to correct his previous practice of issuing authorizations before exemptions. A copy of that opinion and order is attached hereto and is self-explanatory. Also enclosed is a copy of the recent decision in Case No. 00-456-A in which I granted variance relief to allow development of Lots 2, 3, 4 & 5 of Karinvale.

Under the circumstances, I would like to resolve the pending Petition and would appreciate your contacting me at your earliest convenience to advise me how you wish to proceed.

Very truly yours,



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Ermanno Florio
4030 North Point Boulevard, Baltimore, Md. 21222
People's Counsel; Case File



Baltimore County
Zoning Commissioner

ATT: GCM
HOPKINS

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

February 14, 2001

Mr. Ermanno Florio
4030 North Point Boulevard
Baltimore, Maryland 21222

RE: DEVELOPMENT PLAN HEARING
NW/S Cross Road, 2,191.48' NE of Chapel Road (9534 Cross Road)
Case No. XI-735

TO JOHN
LEWIS

FROM RAY HOPKINS

Dear Mr. Florio:

This letter is to follow-up my letter to you of January 31, 2001 regarding the validity of the development plan in the above-captioned matter.

By way of background, development plan approval was granted on March 14, 1996 for the proposed subdivision/development of the subject property with 19 single family dwellings, in accordance with the red-lined development plan submitted therein. Under Section 26-216 of the Baltimore County Code, validity of a development plan expires five (5) years from the date of its approval. Thus, it was initially believed that validity of your plan would expire on March 14, 2001. However, a further review of Section 26-217 of the Code provides for a tolling of that expiration, by reason of a deficiency in the basic services for water, sewer or transportation (see Section 26-217(a)(1)). Further, that Code Section indicates that the approval of the plan shall be extended for so long as the deficiency exists which prohibits development.

In your case, you were prohibited from moving forward with your plan, due to the lack of authorizations available as set out in the zoning regulations for the Honeygo District. Therefore, the expiration of the plan has been extended, or tolled. However, by my Order of January 24, 2001 in combined Cases Nos. 99-331-SPH and 01-205-A, relief was granted to approve 19 authorizations, due to the availability of existing public water and sewer facilities adjacent to the subject site. Thus, in that the prohibition against development of your property has been remedied by that Order, expiration of the validity of your development plan will not occur until five (5) years from the date of that Order, or January 24, 2006.

Please do not hesitate to contact me should you have any further questions in this regard.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. John R. Clark, 2820 Reckord Road, Fallston, Md. 21047
Ronald Decker, Esquire, 4111 E. Joppa Road, Suite 201, Baltimore, Md. 21236
Office of Law; Office of Planning; DPW; Don Rascoe, DPDM; People's Counsel; Case File
Come visit the County's Website at www.co.ba.md.us



Printed with Soybean Ink
on Recycled Paper

JUL 18 '01 15:54

410 477 4225

PAGE.01

Newton A. Williams

DIRECT DIAL:
(410) 823-7856

Law Offices
NOLAN, PLUMHOFF & WILLIAMS

CHARTERED

SUITE 700, NOTTINGHAM CENTRE

502 WASHINGTON AVENUE

TOWSON, MARYLAND 21204-4528

(410) 823-7800

TELEFAX: (410) 296-2765

email: npw@nolanplumhoff.com

Web: www.nolanplumhoff.com

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

July 15, 1999 ⁹

JUL 16

Lawrence E. Schmidt, Esq.
Zoning Commissioner
Fourth Floor, Courts Building
Towson, Maryland 21204

Dear Commissioner Schmidt:

RE: PETITION FOR SPECIAL HEARING
9534 Cross Road (**opposite** Perry Hall Farms)
Emanuel Florio, Petitioner
Case No. 99-331-SPH

In response to your letter of June 30, 1999, I would propose that to save time and money, that we attempt to stipulate to the answers to your questions raised in your letter.

I would propose that we stipulate to the following, which is explained graphically by the **enclosed drawing**:

1. The Property is located on the northwest side of Cross Road, north east of Chapel Road;
2. The Property is physically located in the Belair Road Sub Area, but it sewers through the Perry Hall Farms development.
3. The Perry Hall Farms development is located in the Honeygo Run Sub Area.
4. A part of Perry Hall Farms may also lay in the Beans Run Sub Area.

. If Mr. Silber will procure a letter from PDM to the effect that there are no authorizations currently available in the Beans Run Sub Area, and the status of the four criteria upon which they are dependent, I will urge Mr. Florio to so stipulate.

If possible, Mr. Florio would like to avoid the time and expense of a continued hearing.

However, we wish you to have all the information you need in proper form.

Respectfully,

A handwritten signature in cursive script, appearing to read "Newton", with a horizontal line extending from the end of the signature.

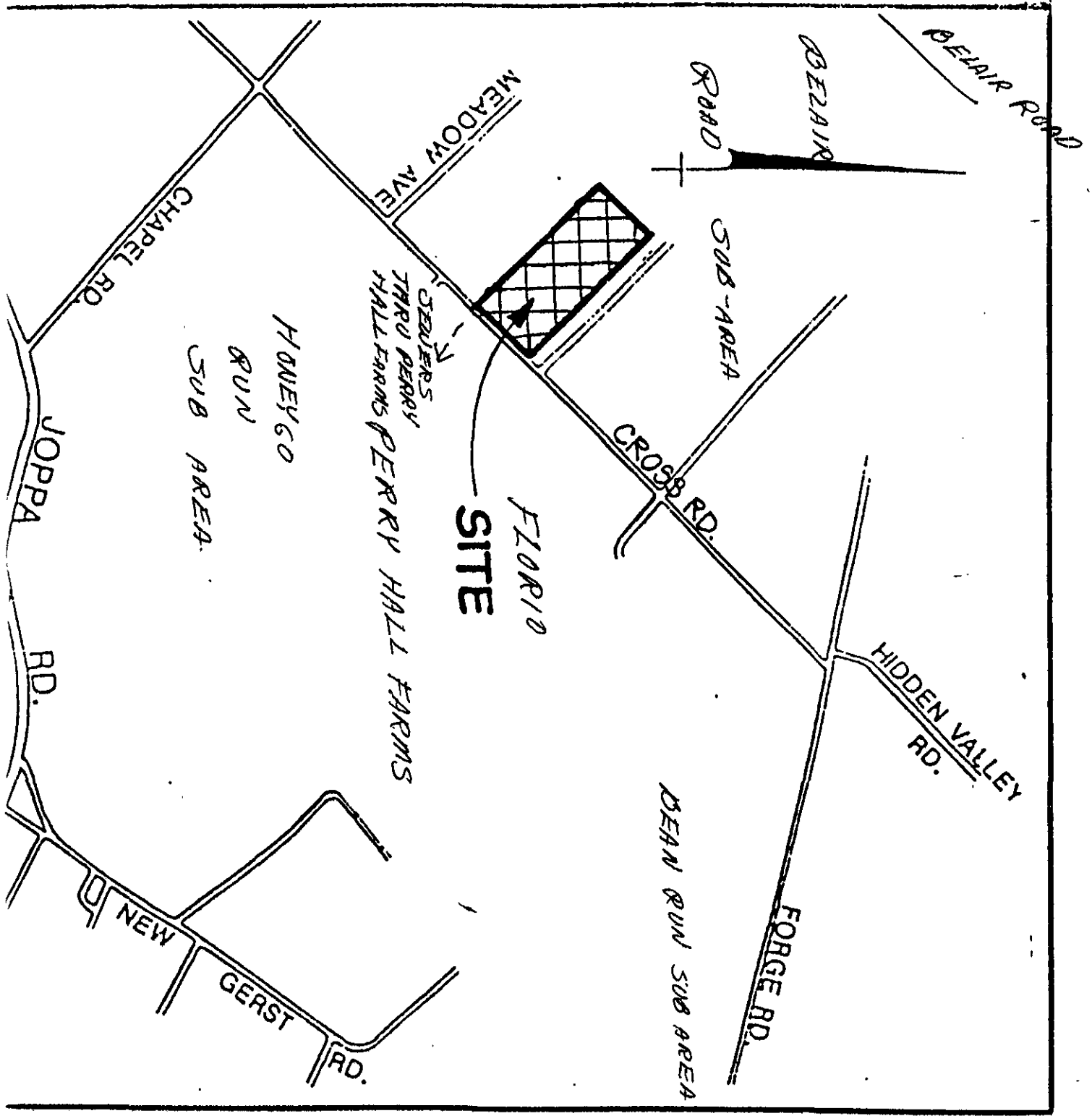
Newton A. Williams

Enclosure Marked Vicinity Map
CC:
Douglas Silber.Esq.
County Attorneys Office
Court House
Towson, Maryland 21204

Mario Florio
4030 North Point Road
Baltimore, Md. 21222

s of Balti-
f the Balti-
earing held
ith the com-
er.
and Hearing
the devel-
Developer's

ce with Sec-



Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



RECEIVED

MAR 9 1996

KCI TECHNOLOGIES, INC.

Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

March 14, 1996

Mr. Ermanno Florio
13218 Dulaney Valley Road
Glen Arm, Maryland 21057

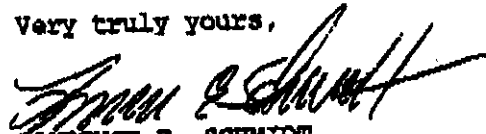
RE: DEVELOPMENT PLAN HEARING
(Florio Property)
NW/S Cross Road, NE of Meadow Ave
11th Election District - 5th Councilmanic District
Ermanno Florio - Owner/Developer
Case No. XI-735

Dear Mr. Florio:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Development Plan has been approved in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Raymond Heil, KCI Technologies, Inc.
10 N. Park Avenue, Hunt Valley, Md. 21030

Mr. & Mrs. Harvey Clay, 9600 Cross Road, Perry Hall, Md. 21128
Ms. Norma McAdam, 1407 Walnut Hill Lane, Towson, Md. 21204
Ms. Anne Ragonese, 1617 Pinutee Road, Timonium, Md. 21093

Mr. Joe Maranto, Proj.Mgr., ZADM; DEPRM; DFW; People's Counsel; File

IN RE: DEVELOPMENT PLAN HEARING
(Florio Property)
NW/S Cross Road,
NE of Meadow Ave
11th Election District
5th Councilmanic District

Ermanno Florio
Owner/Developer

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case Nos. XI-735
*

* * * * *

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER

Pursuant to the provisions of Section 26-206 of the Baltimore County Code, this matter comes before this Zoning Commissioner/Hearing Officer for consideration of a development plan prepared by KCI Technologies, Inc., for the proposed development of the subject property by Ermanno Florio, Owner/Developer, with 19 single family dwellings, in accordance with the development plan submitted into evidence as Developer's Exhibit 1. The subject property is rectangular in shape and consists of 8.0 acres, more or less, zoned D.R. 3.5. The property is located on the north side of Cross Road, southwest of Forge Road in the Honeygo District of Perry Hall.

As to the history of this project, a concept plan for the proposed development and conference thereon was conducted on May 1, 1995. As required, a community input meeting was held on June 14, 1995 at the Gunpowder Elementary School. Subsequently, a development plan was submitted and a conference held thereon on February 14, 1996. Following the submission of that plan, development plan comments were submitted by the appropriate agencies of Baltimore County and a revised development plan incorporating these comments was submitted at the hearing held before me on March 7, 1996.

Appearing at the public hearing required for this project were Ermanno Florio, Owner/Developer, and Raymond Heil, Registered Landscape Architect with KCI Technologies, Inc., who prepared the site plan for this project. Numerous representatives of the various Baltimore County reviewing agencies attended the hearing, including Robert W. Bowling from the Development Plans Review Division of the Department of Public Works (DPW), R. Bruce Sealey and Gayle Parker with the Department of Environmental Protection and Resource Management (DEPRM), John Sullivan and Stephany Wright with the Department of Permits and Development Management (PDM), and Irv McDaniel with the Office of Planning (OP). Several residents from the surrounding locale appeared, including Harvey and Sandy Clay, Norma Ragonese McAdam and Anne Ragonese.

As can be seen from the site plan, the Owner/Developer proposes to develop the property with 19 single family homes. A road will be constructed (Florio Drive) to provide vehicular access to the site from Cross Road. A forest buffer easement area, storm water management facility and forest conservation area is also being provided. It was noted at the hearing that development of the site will not immediately go forward. The property is located adjacent to a large tract of land known as Perry Hall Farms which is presently unimproved. Development on the Florio property will not occur until after Perry Hall Farms has been developed.

Section 26-206 of the Baltimore County Code regulates the responsibilities of the Hearing Officer and the conduct of the Hearing Officer's Hearing. Therein it is required that at the public hearing the Hearing Officer determine what, if any, agency comments or citizen concerns remain unresolved. As to County comments, the only requested revisions noted at the hearing were minor in nature. Specifically, it was requested that a

note be added to the plan indicating that the subject property lies within the Bean Run section of the Honeygo Overlay District. Although the plan does identify the district, it does not specify what Section. Mr. Heil indicated that a note would be added to the plan so identifying the property.

Secondly, it was requested that the note stating "Areas between the site line and curb line must be cleared, graded and kept free of any obstructions" should be deleted. In this respect, that comment should be eliminated in view of potential improvement to the Perry Hall Farms site and Cross Road. Mr. Heil testified that both of these requested changes would be made to the plan, thereby eliminating any open County issues.

The only other concern raised at the hearing related to a proposed retaining wall, which is shown on the southeast corner of the property immediately adjacent to Mr. & Mrs. Clay's property and the access point of Florio Drive near Cross Road. As shown on the plan, the wall is located within an existing access and utility easement area. Mr. & Mrs. Clay, as well as Ms. McAdam and Ms. Ragonesse, expressed concern over the construction of this wall within the easement area.


Mr. Heil agreed that the rights provided under the easement would not permit the retaining wall to be constructed at the proposed location. Therefore, he agreed to amend the plan so as to relocate the wall out of the easement area. A note should be added to the plan indicating that there will be no disturbance of the easement area or interference with the rights of the parties thereunder. Relocation of the wall and addition of such a note was acceptable to these neighbors. Other than these comments, Mr. Heil's testimony was uncontradicted that the plan is in compliance with all County development standards, regulations, and policies, and

thus, under law, the plan should be approved. Moreover, there are no additions or further amendments to the plan required to safeguard the neighborhood. Thus, consistent with the comments contained herein, the plan shall be approved.

Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan shall be approved consistent with the comments contained herein and the restrictions set forth hereinafter.

THEREFORE, IT IS ORDERED by the Zoning Commissioner and Hearing Officer for Baltimore County this 14th day of March, 1996 that the development plan for the Florio Property, identified herein as Developer's Exhibit 1, be and is hereby APPROVED.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.


LAWRENCE E. SCHMIDT
Hearing Officer
for Baltimore County

LES:bjs



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

February 1, 1999

Mr. Ermanno Florio
4030 North Point Boulevard
Baltimore, Maryland 21222

Dear Mr. Florio:

RE: Florio Property, Project Number XI-735, Belair Road Honeygo Subarea,
11th Election District

Thank you for your letter of January 26, 1999 to Arnold Jablon, Director of Permits and Development Management. This correspondence, in which you requested 19 authorizations in the Belair Road Honeygo subarea, has been referred to me for reply.

I regret to inform you that at the present time there are no authorizations available in the Honeygo Area. Pursuant to Section 259.7.D.1. of the Baltimore County Zoning Regulations (BCZR), which states that prior to the commencement of the Forge Acres sanitary sewer capital project, the Honeygo Boulevard capital project (Ebenezer Road to Joppa Road), the water main second zone capital project, and the construction of an athletic field at Honeygo Park; the Director of Permits and Development Management may issue up to 400 authorizations for the Honeygo Area. Those authorizations have been designated for use by Perry Hall Farms.

In addition, Section 259.7.E.4.d of the BCZR specifically states that the Director may issue no authorizations prior to the commencement of the Honeygo Run sewer interceptor capital project. That project must commence and your plat must be recorded prior to any issuance of authorizations within the Belair Road subarea.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

A handwritten signature in black ink, appearing to read "MJK", written over a horizontal line.

Mitchell J. Kellman
Planner II
Zoning Review

MJK:cjs

Come visit the County's Website at www.co.ba.md.us



Printed with Soybean Ink
on Recycled Paper

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE – SW/Corner Holter Road		
and Old Philadelphia Road	*	ZONING COMMISSIONER
(Lots 2, 3, 4 & 5 of Karinvale and Tract A		
of the Holter Property)	*	OF BALTIMORE COUNTY
11 th Election District		
5 th Councilmanic District	*	Case No. 00-161-SPHA
Joseph G. Holter, et ux	*	
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance for the property known as Lots 2, 3, 4 and 5 of the residential subdivision known as Karinvale, and Tract A of the Holter property, located in the Honeygo community of eastern Baltimore County. The Petitions were filed by the owners of the subject property, Joseph G. and Beverleigh A. Holter, and the Developer, Winsome Homes, Inc., through their attorney, Ronald A. Decker, Esquire. The Petitioners request a special hearing to determine whether the Director of the Department of Permits and Development Management (PDM) erroneously granted excess building permit authorizations to Perry Hall Farms Joint Venture, under Section 259.7.C of the Baltimore County Zoning Regulations (B.C.Z.R.) when exemptions were available to that subdivision under Section 259.7.C, and whether such authorizations were in violation of Section 259.7.I of the B.C.Z.R. because they were granted to Perry Hall Farms by a contract agreement prior to the existence of approved record plats. In addition, the Petitioners request variance relief from Section 259.9.B.4.b of the B.C.Z.R. to permit a residential building to arterial road setback of 25 feet in lieu of the required 40 feet for Lot 5 of Karinvale, also known as 11347 Holter Road. The subject property and requested relief are more particularly shown on the site plan submitted and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing held for this case were Joseph G. Holter, property owner, John R. Clark on behalf of Winsome Homes, Inc., Developer, and Ronald A.

Decker, Esquire, attorney for the Petitioners. Appearing in opposition to the request was Stephen Rosen on behalf of Perry Hall Farms, who was represented by Robert A. Hoffman, Esquire and Patricia A. Malone, Esquire.

As is the situation with many of the most difficult and intricate cases which come before this Zoning Commissioner, the facts surrounding the issues raised in the Petitions filed herein are not in dispute. Rather, it is the interpretation of the relevant portions of the Baltimore County Zoning Regulations (B.C.Z.R.) that is at issue. Limited witness testimony was offered at the hearing in this case; however, a series of documents marked as Petitioner's Exhibits 1 thru 21 were submitted at the hearing. Additionally, both sides were provided the opportunity to submit briefs on the issues raised subsequent to the hearing. Well-written memoranda from both parties were indeed submitted and have been reviewed and considered by this Zoning Commissioner.

BACKGROUND

During the 1980s, the Honeygo area of eastern Baltimore County (Perry Hall/White Marsh) was recognized by County officials as a designated growth area and fertile for development. Nonetheless, the Baltimore County Council recognized the lack of existing public facilities in this area and the need for orderly and controlled growth and development. The County recognized these issues when it enacted the Baltimore County Master Plan, 1989-2000, on February 5, 1990. Later, it imposed a building moratorium on residential development in that area, pending passage of a specific plan for Honeygo (see Bill No. 114-94, codified as Section 26-560 of the Baltimore County Code).

In 1994, the County Council passed Bill No. 176-94, which defined the Honeygo area and created the "H" and "H1" zoning overlay districts. This geographic area encompasses land bounded by Belair Road on the west, Gunpowder Falls on the north, Philadelphia Road on the east, and a combination of Chapel Road and Honeygo Road on the south. Additionally, the Council divided the Honeygo area into four sub-areas, known as Bean Run, Belair Road, Bird River, and Honeygo Road. In order to control the pace of development in those areas, the Council provided that building permits within these sub-areas were not to be issued except as authorized by the

Director of the Department of Permits and Development Management (PDM). Development of the area was to be controlled and to coincide with the installation of public facilities and infrastructure.

Originally, Bill No. 176-94¹ empowered the Director of PDM to issue up to 300 "authorizations" for building permits to be used anywhere in the Honeygo area, and 300 "authorizations" to be used specifically within the Bean Run sub-area. The subject property, as well as the development known as Perry Hall Farms, are located in the Bean Run sub-area. Thus, initially there were a total of 600 authorizations that could be utilized for development in the Bean Run area. Each authorization would permit the connection of one residential dwelling to the sewer system to be installed in the area. This legislation was enacted, no doubt to insure that adequate sewers and public facilities existed as development was built out.

In addition to empowering the director of PDM to issue up to 600 authorizations within the Bean Run sub-area, Bill No. 176-94 provided for certain exemptions from the requirement that authorizations be obtained as a prerequisite to obtaining a building permit. These exemptions would permit sewer connections for certain properties which would not count against the number of authorizations provided. Exemptions were provided for the following: additions, renovations, or accessory structures; applications for building permits made in the Honeygo area for up to 300 dwelling units on any property which had an unexpired County Review Group (CRG) plan that was approved prior to May 18, 1992; minor subdivisions; commercial buildings; any lot of record not part of a recorded subdivision; institutional buildings; and, up to 425 density units on any property zoned D.R.10.5, other than those properties with an unexpired CRG plan as of May 18, 1992. Thus, between the 300 "exemptions" and 600 "authorizations", Bill No. 176-94 permitted up to 900 total connections.

In 1997, by the enactment of Bill No. 40-97, these limits were increased. The total number of authorizations for both the Honeygo area and the Bean Run sub-area were increased from 300 each to 400 each (800 total), and the exemptions were increased to permit up to 600

¹ Bill No. 179-94 was codified as Section 259.4 et seq. of the B.C.Z.R.

connections. Thus, under Bill No. 40-97, there was created a total of 800 authorizations which could be utilized within the Bean Run sub-area, and 600 exemptions available to a qualified property with an unexpired CRG plan, for a total of 1400 connections.

Subsequently, additional legislation was enacted by the County Council, including Bills Nos. 126-97 and 73-99. Bill No. 126-97 permitted exemptions to be transferred to any property within the sub-area upon approval of the Director of PDM. Under Bill No. 73-99, the application of the area-wide authorizations was altered so that any authorizations issued within a sub-area would be subtracted from the total number of authorizations available in the Honeygo area at large. However, neither of these subsequent Bills amended the number of connections permitted as either authorizations or exemptions.

Since the enactment of this legislation, authorizations and exemptions have been issued, recognized, and/or awarded by the County. On April 11, 1997, the Director of PDM granted 36 authorizations to Mr. & Mrs. Holter and Mr. Clark for development of the "Holter Property". Deducting these 36 authorizations from the 800 available as described above, a balance of 764 available authorizations remained at that time. Thereafter, on July 29, 1998, Perry Hall Farms requested, and was granted, 261 authorizations (103 for Section I and 158 for Section II). A deduction of those authorizations from the number available left 503 authorizations remaining.

On January 27, 1999, the Developers of the subdivision known as Glenside Farms requested and received 191 authorizations. These authorizations reduced the total number of authorizations remaining to 312. On that same date, Perry Hall Farms requested 545 building permits. In that only 312 authorizations remained, these were granted to Perry Hall Farms, and the balance (233) needed were permitted as exemptions. That is, the Perry Hall Farms subdivision, consisting of 1,142 density units, had 600 exemptions available to it because it indeed had an unexpired CRG plan approved prior to May 18, 1992.

The County awarded the remaining number of authorizations available to Perry Hall Farms and granted the balance of permits needed as exemptions. Thus, as of January 27, 1999, the 800 authorizations permitted by law had been depleted and Perry Hall Farms had utilized 233 of

authorizations for four residential building permits, in accordance with Petitioner's Exhibits 1A & 1B, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

IN RE: PETITION FOR VARIANCE
N/S Old Philadelphia Road, 40' S of
the c/l Holter Road
(Lots 2, 3, 4 & 5 of Karinvale)
11th Election District
5th Council District

Joseph G. Holter, Owner Lots 4 & 5, and
Winsome Homes, Inc., Owner Lots 2 & 3

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 00-456-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance for the properties known as Lots 2, 3, 4 and 5 of the residential subdivision known as Karinvale, located in the Honeygo community of eastern Baltimore County. The lots are also known as 11341, 11343, 11345 and 11347 Holter Road, respectively. The Petition was filed by Joseph G. Holter, owner of Lots 4 & 5, and Winsome Homes, Inc., by John R. Clark, President and owner of Lots 2 & 3, through their attorney, Ronald A. Decker, Esquire. The Petitioners request variance relief from Sections 259.7.D and E of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the issuance of four authorizations for four residential building permits. The subject property and relief requested are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibits 1A and 1B.

Appearing at the requisite public hearing in support of the request were John R. Clark and Joseph G. Holter, respective owners of the lots identified above, and Ronald A. Decker, Esquire, attorney for the Petitioners. Also present were David Karceski, Esquire, attorney for an adjacent property owner, and Bob Linhard, a nearby resident of the area. There were no Protestants or other interested persons present.

The four lots under consideration in the instant case were actually created by the development of an adjacent tract, known as the Holter Property, by Messrs. Holter and Clark. That adjacent tract is approximately 14 acres in area and was developed with 36 single family homes. Mr. Clark indicated that due to constraints associated with the public road that was constructed for

the Holter development, the four subject lots were not developed with the Holter subdivision. Cumulatively, the lots under consideration total .772 acres in area, more or less, zoned D.R.3.5 and remain unimproved. Photographs of the lots and area in question (Petitioner's Exhibits 2A through 2F) show that the Holter Property has been developed and that public utilities and improvements have been constructed. Specifically, Holter Road has been built out and public water and sewer are available in the bed of that roadway. As shown on the plan, the subject lots are immediately adjacent to Holter Road and lie adjacent to the intersection of that road and Maryland Route 7 (Philadelphia Road). As noted above, the lots are presently unimproved, but are proposed for development with single family dwellings by the Petitioners.

Development of these four lots is governed by Section 259 and Article 4A of the B.C.Z.R. Sections 259.4 through 259.9 of the B.C.Z.R. sets out the standards for development in the Honeygo H and H1 overlay districts. The Honeygo Overlay Districts were legislatively established to implement the Honeygo Area Plan, an amendment to the Master Plan 1989-2000. That area was created to insure that development of infra-structure would coincide with the issuance of building permits. The scheme of development in the Honeygo area is to foster heightened design elements and a regional approach to development.

Section 259.7 of the B.C.Z.R. sets out the threshold limits for development within the overall Honeygo area. Sub-section 259.7.D sets out the area threshold requirements and restricts the number of building permit authorizations which can be issued. As noted above those authorizations are issued only upon completion of the necessary infra-structure. Section 259.7.E identifies sub-areas within the Honeygo district. That Section also limits the number of building permit authorizations which can be issued in the respective sub-areas. The subject properties, in addition to their location within the Honeygo area at large, are situated within the Bean Run sub-area. It need be emphasized, as indicated during Mr. Clark's testimony, that all public improvements and utilities in the immediate vicinity have been completed. Holter Road has been constructed and dedicated and public sewer and water is available to the subject lots from the bed of that road. Nonetheless, the Petitioner has been prohibited from securing building permits for

these lots. By letter dated July 8, 1999 (Petitioner's Exhibit 7), the Baltimore County Department of Permits and Development Management (PDM) advised the Petitioners that the subject lots would be placed on a waiting list for the issuance of building permits because all authorizations within the Bean Run sub-area and Honeygo area had been exhausted.

The history of this process and a detailed discussion of these sections of the B.C.Z.R. are set out in this Zoning Commissioner's Opinion in prior Case No. 00-161-SPHA. Therein, I discussed the legislative history of this Section and the issuance of authorizations. By my Order dated March 23, 2000, I granted the Petitioners' request for special hearing and variance relief to effectuate development of the subject four lots.

Frustrated through its attempts to obtain relief pursuant to that Petition for Special Hearing, the Petitioners have filed the instant Petition for Variance of the threshold limits for the Honeygo area and Bean Run sub-area. A variance of those standards is expressly permissible and within the Zoning Commissioner's jurisdiction, pursuant to Section 259.8 of the B.C.Z.R. Moreover, in considering any such variances, the Zoning Commissioner shall consider the standards of Section 4A02.4.F of the B.C.Z.R. Those Sections require that the Zoning Commissioner find, "1) That the demand or impact of the development proposed will be less than that assumed by the District standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal; and, 2) that the granting of the Petition will not adversely affect the person whose application was filed prior to the Petitioner's application in accordance with Section 4A02.3.G.2.b."

As indicated in a memo from Mitchell J. Kellman, Planner II with the Department of Permits and Development Management (PDM) to Arnold Jablon, Director of that agency, dated February 14, 2000, in order for additional authorizations to become available within the Bean Run sub-area, the Forge Road capital project from Cross Road to Forge View Road, and the Cross Road capital project from Honeygo Boulevard to Forge Road, must commence. That is, improvements to Forge Road and Cross Road must be undertaken in order for additional authorizations to become available.

In this regard, Mr. Clark submitted a map of the general area (Petitioner's Exhibit 5) and offered testimony regarding this issue. That map shows the location of the Holter Property in addition to those sections of Forge Road and Cross Road which are subject to the County's Capital Improvement Program. Testimony and evidence offered was persuasive that potential residents of the four lots at issue will not impact those sections of the identified roadways which must be improved. That is, Mr. Clark indicated that the roads are a significant distance away (approximately 2.5 miles) from this small subdivision. Additionally, Mr. Clark traced the probable routes that individuals travelling to and from the subject properties would utilize. Most drivers would use Philadelphia Road to reach I-95 and access points north and south of the development. To travel west (towards Towson), drivers would use Joppa Road. Motorists travelling in a westerly direction from the site are moving away from the proposed road improvements.

I find the testimony of Mr. Clark credible and appropriate. In my judgment, the testimony and evidence offered was persuasive to a finding that the impact of this proposed four-lot subdivision will be less than that assumed by the District standard which would otherwise restrict or prohibit the development. Moreover, in that this subdivision is the first subdivision to be served on the County's waiting list, I find that the granting of the Petition will not adversely affect the person whose application was filed prior to the Petitioner's application.

For these reasons, the Petition for Variance shall be granted. This proposed four-lot subdivision will cause negligible impact to the road network in the area. More importantly, the proposed improvements, which at the present time, prohibit the issuance of building permits, are unaffected by the development of this small subdivision. I find that the facts and evidence presented meet the test at law and that the Petition for Variance should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 31st day of June, 2000 that the Petition for Variance seeking relief from Sections 259.7.D and E of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the issuance of four

the 600 exemptions recognized by law. Thus, at that time, there were 367 exemptions remaining. On March 19, 1999, Perry Hall Farms requested and received an additional 336 "exemptions" (building permits). Thus, after that approval, 31 exemptions were remaining of the 600 total. Perry Hall Farms later utilized 5 additional exemptions, transferring them to another project (the Ruppert property) as is permitted by law. Thus, at present, there are 26 exemptions available and all of the authorizations are depleted.

It is of note that there was no testimony or evidence presented to this Zoning Commissioner suggesting that any entity other than Perry Hall Farms is entitled to the 600 exemptions allowed by law. That is, the record of this case contains no evidence identifying any other projects with pre-existing CRG plans or that fall within any of the criteria listed as the basis for granting an exemption. As noted above, the subject property is located within the Bean Run sub-area, as is the Perry Hall Farms subdivision.

In June 1999, Mr. Clark on behalf of Winsome Homes, Inc. requested 4 authorizations (building permits) for Lots 2, 3, 4 and 5 that are part of the Karinvale subdivision. In response thereto, Mr. Jablon's office denied his request. Their explanation indicated that the supply of authorizations had been exhausted. Moreover, as noted above, the Petitioners fit within none of the categories which would enable them to obtain building permits as exemptions.

Thus, the issue in the instant case can be framed quite simply. The Petitioners contend that Perry Hall Farms should have been required to utilize its 600 exemptions prior to using authorizations. The Petitioners further contend that permitting Perry Hall Farms to utilize authorizations first, rather than exemptions, is illegal and unfair. Under the Petitioners' theory, had Perry Hall Farms been required to utilize its exemptions first, authorizations would remain available at this time for use by other Developers, including the Petitioners.

For their part, Perry Hall Farms contends that it and Baltimore County acted properly. Perry Hall Farms avers that the law does not require that exemptions be utilized first. Perry Hall Farms contends that its acquisition of authorizations was "fair and square" and that its retention of

26 exemptions at the present time is appropriate. The issue thus framed, attention is next turned to the arguments of the parties.

JURISDICTION OF THE ZONING COMMISSIONER

The parties disagree as to a threshold issue relating to the resolution of this matter; to wit, the jurisdiction of the Zoning Commissioner. As noted above, the Petitioners have filed the Petition for Special Hearing, seeking a resolution of the issue relating to the granting of the exemptions, viz a viz authorizations. For its part, Perry Hall Farms contends that this issue is improperly before the Zoning Commissioner. Citing United Parcel Service, Inc. v. People's Counsel of Baltimore County, 336 Md. 569 (1994), Perry Hall Farms contends that Mr. Jablon's denial of the Petitioners' request for authorizations is "an action of an administrative officer," as defined in the Maryland Annotated Code, Article 25A, Section 5U, and the Baltimore County Code, Charter, Section 602D. As such, the Petitioners contend that the Protestants should have filed an appeal of Mr. Jablon's decision to the County Board of Appeals. Simply stated, Perry Hall Farms argues that the decision of Director Jablon in July 1999 was an appealable event. In that more than 30 days have passed since that time and no appeal was filed, Perry Hall Farms considers the case closed. Perry Hall Farms also notes Director Jablon's written reaffirmation of his earlier decision, by subsequent letter of July 29, 1999. It is argued by Perry Hall Farms that an appeal from neither of these actions/decisions was made, thus, the instant Petitions cannot be entertained.

In my judgment, Perry Hall Farms' reliance upon the UPS case is misplaced and this matter is properly before the Zoning Commissioner. I explain. The Office of the Zoning Commissioner is a statutorily created position.² The duties of the Office of the Zoning Commissioner are specifically enumerated in the Charter, the Baltimore County Code, and the B.C.Z.R. Likewise, the position of the Director of PDM is a statutorily created position. Director Jablon's authority is also set out in the Baltimore County Code.³

² See Md. Code Ann., Article 25A, Section 5(x); Baltimore County Charter, Section 522; Baltimore County Code Section 26.3

³ See Baltimore County Code, Section 26-135

The regulation under consideration in this case, as enacted through the Bills set forth and described above, is codified in Sections 259.4 through 259.9 of the B.C.Z.R. Although portions of these zoning regulations empower actions by the Director of PDM, as opposed to the Zoning Commissioner, the legislation itself has been codified as part and parcel of the B.C.Z.R.

Section 500.7 of the B.C.Z.R. provides, in part, "the said Zoning Commissioner shall have the power to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice, to determine the existence of any purported nonconforming use on any premises, or to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." (emphasis added)

This language makes it abundantly clear that it is the Zoning Commissioner, and not the Director of DPDM, who has the sole authority and prerogative to interpret and construe the B.C.Z.R. Although it is indeed the Director of PDM who is authorized to grant authorizations, the question here runs deeper. Specifically, how is Section 259 of the B.C.Z.R. to be construed and interpreted? This judgment is strictly within the province of the Zoning Commissioner and not any other governmental official. Thus, through its filing of the Petition for Special Hearing, the Petitioners exercised the appropriate avenue to seek relief and interpretation of the relevant zoning regulations. Neither the County Code or the B.C.Z.R. abrogate the jurisdiction of the Zoning Commissioner. Although the Director of PDM is authorized to "administer" the zoning Code (Section 26-3(d), Baltimore County Code), and "to make, adopt, promulgate and amend...such policies, rules or regulations" relating to the B.C.Z.R. (Section 26-135, Baltimore County Code), the Director is not authorized to interpret or construe the B.C.Z.R. That authority is vested solely to the Zoning Commissioner.

This was indeed recognized by Mr. Jablon in his written correspondence on this issue. As noted above, Mr. Clark initially wrote to PDM seeking authorizations on June 10, 1999.

Mitchell J. Kellman, a Planner II and designee of Mr. Jablon, responded by letter of July 8, 1999, setting out the Director of PDM's position that all authorizations had been utilized and that there were none available. Mr. Clark then obtained Counsel, who wrote for clarification of this position, on July 21, 1999. In response, Mr. Jablon personally responded, setting out his rationale for the position that no authorizations were available. Mr. Jablon concluded by stating "Should you disagree with this interpretation, you may proceed to file a special hearing before the Zoning Commissioner." In my judgment, this was both sound and correct advice which the Petitioners have exercised.

Should the position of Perry Hall Farms be adopted, an absurd result could be reached. Can an individual seek an interpretation of the B.C.Z.R. from any County employee and upon issuance of such opinion, would all interested parties thereafter be bound if a timely appeal was not filed? Perry Hall Farms' position, taken to its illogical conclusion, could result in an unappealable "action" authored by an unauthorized employee of Baltimore County and thus, said action would be binding. Surely, this should not be the case. The simple fact of the matter before me is that it is the Zoning Commissioner who possesses the authority to decide this issue and that such an interpretation should be sought, as was done here, by the Petition for Special Hearing. Director Jablon recognized this conclusion, as do I. Director Jablon's view of the B.C.Z.R. is his opinion, only; it is not the definitive interpretation of a provision thereof. The Zoning Commissioner makes that ruling, subject, of course, to appeal to the County Board of Appeals and Courts of this State.

Moreover, another point raised in Petitioners' memorandum has merit. As noted in that memorandum, the action taken by Director Jablon was not an exercise of his authority under the zoning regulations. Rather, he was merely reporting to the Petitioners a position that had been taken by Baltimore County as it related to its contractual agreement with Perry Hall Farms. Director Jablon's letter to the Petitioner was not a ruling, Order, or a decision in the context of Section 25(c). As noted by Petitioners' counsel, it is not Mr. Jablon's reporting of the County's position which is being challenged by the Petitioners, but the alleged ultra-vires acts of the County that are being challenged.

Finally, the UPS case can be factually distinguished from the scenario presented here. In UPS, there was no doubt that the Zoning Commissioner was the County official vested with jurisdiction to consider the question presented. As noted above, the individual who has issued the Order from which the Protestants believe an appeal would be taken, is not authorized to do so.

AUTHORIZATIONS V. EXEMPTIONS

Having determined that the Zoning Commissioner has the authority to consider the issue presented, attention is next turned to the specific question presented. This is a most difficult question. Indeed, as pointed out by Perry Hall Farms, there is no language within the Honeygo legislation (Section 259, B.C.Z.R.) which requires that exemptions be depleted prior to the issuance of authorizations. It is just as obvious, however, that the reverse is true. Indeed, the legislation and relevant sections of the B.C.Z.R. are silent on whether authorizations should be utilized first, and exemptions second; or, vice versa.

A review of the legislative history of the Bills at issue is not helpful. There were no documentary exhibits introduced on this issue at the hearing. Additionally, this Zoning Commissioner's research and review as to the legislative history of these Bills uncovers no material which is of assistance.

Director Jablon's opinion that exemptions need not be utilized appears to be primarily based upon the contractual arrangements made by and between Perry Hall Farms and Baltimore County. As discussed extensively in Petitioners' memorandum, Perry Hall Farms contracted with Baltimore County under a Memorandum of Agreement, dated April 21, 1997 (Petitioner's Exhibit 4). Essentially, that agreement provided that the County would make available of the necessary number of authorizations to permit development of the Perry Hall Farms property in exchange for certain acts by Perry Hall Farms.

Baltimore County and Perry Hall Farms later found it necessary to amend their agreement to expedite construction of the Bean Run sewer interceptor across another property in the area owned by the Schwartz family. An Amendment to the Memorandum of Agreement was executed on October 9, 1997 (Petitioner's Exhibit 3). Interestingly, that amendment provides in

Paragraph 2, that Perry Hall Farms can utilize authorizations prior to utilizing any exemptions. The insertion of this language in the Memorandum of Agreement was an apparent attempt to clarify the B.C.Z.R., by contractual means.

Although I do not dispute the well-meaning intentions of both the County officials and the principals of Perry Hall Farms who entered into these agreements, their actions, in my judgment, represent "contract zoning" and thus, are not the basis upon which the B.C.Z.R. should be interpreted. It is illegal for the zoning authority to contract away its future use of police power and contract zoning is null and void (see People's Counsel v. Beechwood One Ltd. Partnership, 107 Md. App. 627 (1995)). A governmental entity cannot surrender or impair its obligation to independently and impartially consider its zoning regulations and procedures established by law. By definition, illegal, or "contract zoning" is not only the zoning of a property for consideration, but the contracting away of the County's authority as sovereign. Thus, although this Zoning Commissioner obviously does not have such authority to void or set aside the contracts between Perry Hall Farms and Baltimore County, I will not recognize their existence as a basis for interpreting the issue presented. They are, in my judgment, of questionable validity.

It is the cardinal rule of statutory interpretation that the words used in any legislation are to be given their natural and usual meaning, considered with reference to the aim and objective of the statute. (See Chesapeake Industrial Leasing Co. v. Comptroller, 331 Md. App. 428 (1993)). A statute must be interpreted reasonably and with reference to the legislative purpose, aim or policy as reflected in that statute. (Department of Economic and Employment Development v. Lilley, 106 Md. App. 744 (1995)). Moreover, in order to ascertain and effectuate legislative intention, an examination of the language of the statute, itself, is the primary tool used. (Klingenberg v. Klingenberg, 342 Md. App. 316 (1996)).

This is a difficult case in that the statute is silent as to whether authorizations or exemptions need be utilized first. The regulation itself does not address this point, nor, as noted above, does information available regarding the legislative history of these enactments. Moreover, the issue is so narrow as to provide little *stare decisis*. This Zoning Commissioner was unable to

uncover other cases on this point. Nonetheless, the choice of the words used by the legislature is of note. The legislature provided for certain "exemptions" and "authorizations" to permit the issuance of building permits as outlined above.

An exemption has been defined as "a release from some burden or obligation." (see State v. Exxon Corporation, 676 So 2nd, 783 (1996). In essence, an exemption is a favor conferred, frequently by government, in the regulation of certain activities. There can be exempt employees from certain labor law requirements. There are exemptions from taxes, and exempt property from the reach of creditors or in the bankruptcy court. Indeed, there are certain exempt corporations, persons, or entities from various law and regulation. The B.C.Z.R. also directs that the reader consult Webster's Third New International Dictionary to define any word used therein for which a specific definition is not provided. The definitions in Webster's are consistent with the case law. "Exempt" means, "excepted from the operation of some law or obligation." An "exemption" means, "the state of being exempt."

It seems clear that the use of the term "exemption" establishes a class of individuals or subjects which is beyond the reach of the regulation at issue. In construing statutes and regulations, exemptions are most frequently set out initially to determine the breadth and applicability of the subject matter under consideration. After such exemptions are determined and identified, then the applicability of the statute or regulation under consideration is further defined and delineated to those who are not "exempt".

Under this scheme, it would be a reasonable assumption that exemptions should be utilized first. It was easy to identify those projects which had a validly existing CRG plan or other basis and would be entitled to the 600 exemptions so created when the subject legislation was enacted. The identity of those entities which might acquire the authorizations was indeed unknown and would be determined subsequently by a "race to the Courthouse."

This fact buttresses the conclusion that exemptions should be applied first in that they are known and exist at the time the legislation is drafted; and that authorizations, which are

awarded only after the Bill and pursuant to the policies and procedures established therein, should be issued thereafter.

Based on the aforementioned, it is therefore this Zoning Commissioner's interpretation of Section 259 of the B.C.Z.R. that the Director of PDM is required to issue exemptions first, prior to authorizations. In an instance where a particular entity, such as Perry Hall Farms, is entitled to both exemptions and authorizations, the exemptions, should be utilized beforehand, prior to the issuance of any authorizations.

As stated hereinabove, the authority and jurisdiction of the Zoning Commissioner is limited. Indeed, the Office of the Zoning Commissioner is empowered to construe, interpret and apply the zoning regulations, only. I have no authority to set aside matters of contract, including the Memorandum of Agreement and Amendment to Agreement thereto. Additionally, I make no finding as to whether the Memorandum of Agreement violates Maryland's Anti-Trust Act, as requested by the Petitioners. A Judge of the Circuit Court may do so, not I. Nonetheless, it is my duty to interpret the zoning regulations, which I have done so as set out above.

Having reached this conclusion, it would seem a simple matter for this Zoning Commissioner to direct that the authorizations previously issued to Perry Hall Farms be revoked and replaced with exemptions, to the extent numerically permitted. However, I hesitate to issue such a directive. Although my interpretation (subject to appeal) should be hereafter applied in the administration of Section 259.4 et seq of the B.C.Z.R., whether it should be applied retroactively is questionable. Key issues remain. Having issued authorizations to Perry Hall Farms, is Baltimore County now estopped from revoking and replacing them with exemptions? Was Perry Hall Farms prejudiced by the County's previous administration of this Section? Are the authorizations issued to Perry Hall Farms vested, as that concept is defined by law? The record of this case is silent on the issues of estoppel, vesting, and prejudice, etc. Moreover, the implications of the contracts between Perry Hall Farms and Baltimore County are beyond the jurisdiction of the Zoning Commissioner.

To the narrow questions presented, whether the Zoning Commissioner has jurisdiction to consider the intent of the Petition for Special Hearing, and whether exemptions should be issued prior to authorizations, I answer both in the affirmative. However, I decline to require the Director of PDM to remedy the present situation based upon an insufficient record to support such a requirement.

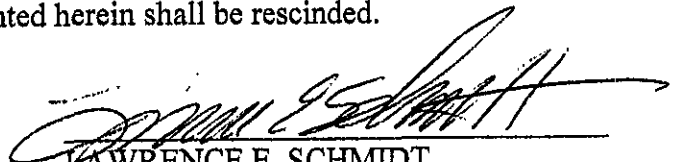
Turning to the Petition for Variance, same will also be granted. As noted at the hearing and within the Petitioners' Memorandum, the request here is for similar relief as was granted for other properties. I am persuaded, for the reasons set out in Petitioners' Memorandum, that variance relief should be granted and complies with the requirements of Section 307 of the B.C.Z.R. Thus, the Petition for Variance shall also be granted.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 23rd day of March, 2000 that Section 259.7.C of the Baltimore County Zoning Regulations (B.C.Z.R.) requires that for any project which is entitled to "exemptions" (as defined therein), such "exemptions" shall be utilized before "authorizations" (as defined therein) are awarded, and as such, the Petition for Special Hearing be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 259.9.B.4.b of the B.C.Z.R. to permit a residential building to arterial road setback of 25 feet in lieu of the required 40 feet for Lot 5 of Karinvale, known as 11347 Holter Road, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

Settlement

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

99-331-X

NAME

ADDRESS

Newton Williams
MARIO FLORIO
LOIS FLORIO
JOHN R. CLARK
Ronald Decker
ROBERT LUND

502 Wash. Ave. 21204
4030 NORFOLK BLVD - 21222
4030 N. PT BLVD JARVIS
2820 Reckord Rd 21047
4111 E. Joppa Rd Suite 201 21236
11300 C YORLUND DR 443 2500296

IMPORTANT MESSAGE

FOR Bette
DATE 7/6 TIME 2:30 A.M. P.M.
M Barbara Ormrod
OF Denable
PHONE 410/494-6201
Q FAX AREA CODE NUMBER EXTENSION
Q MOBILE AREA CODE NUMBER TIME TO CALL

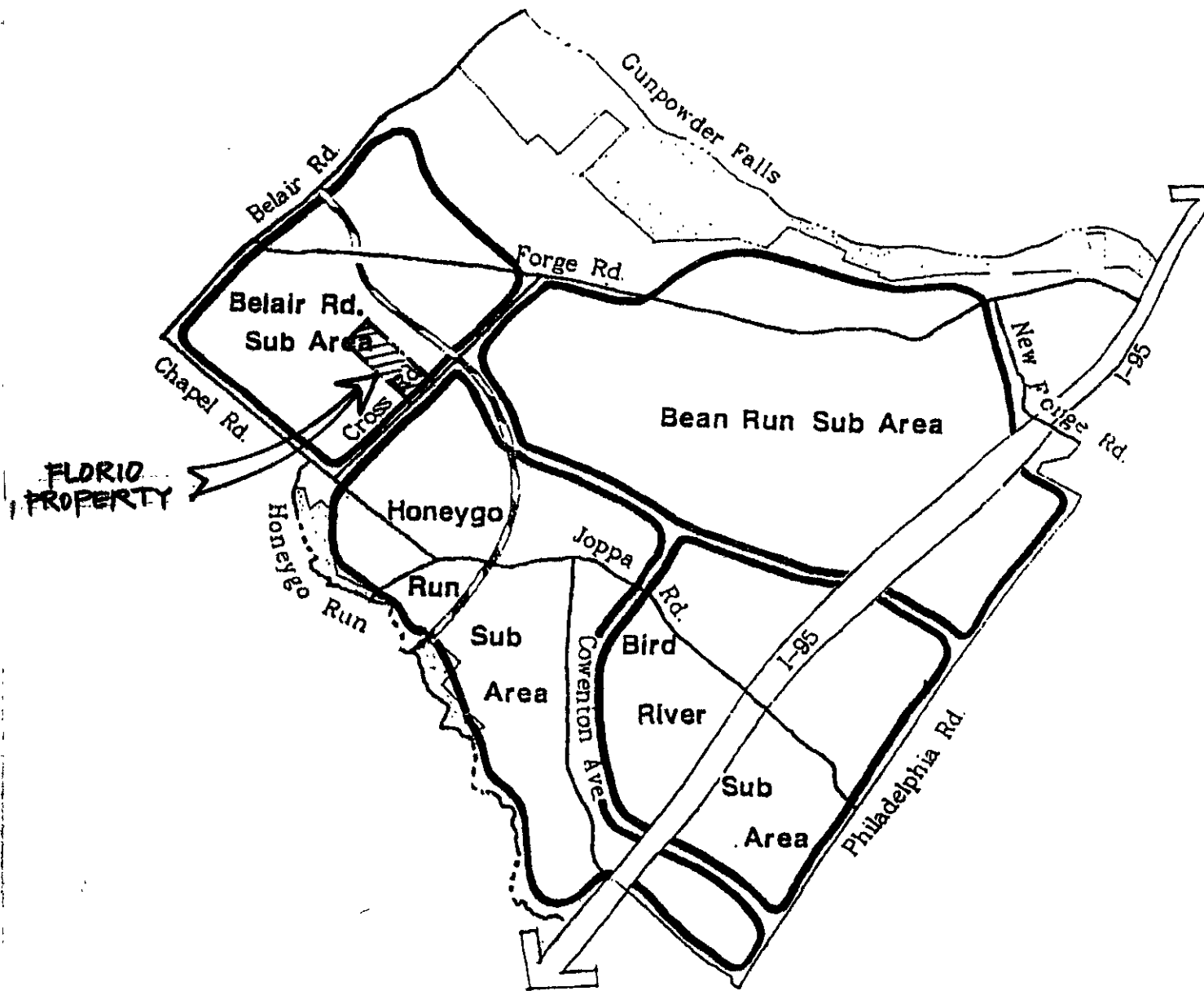
TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE Re: 99-391-SPH
(Ormanno Florio)

Please note in file
to send her a copy of
this decision when posted

SIGNED

Sub Areas



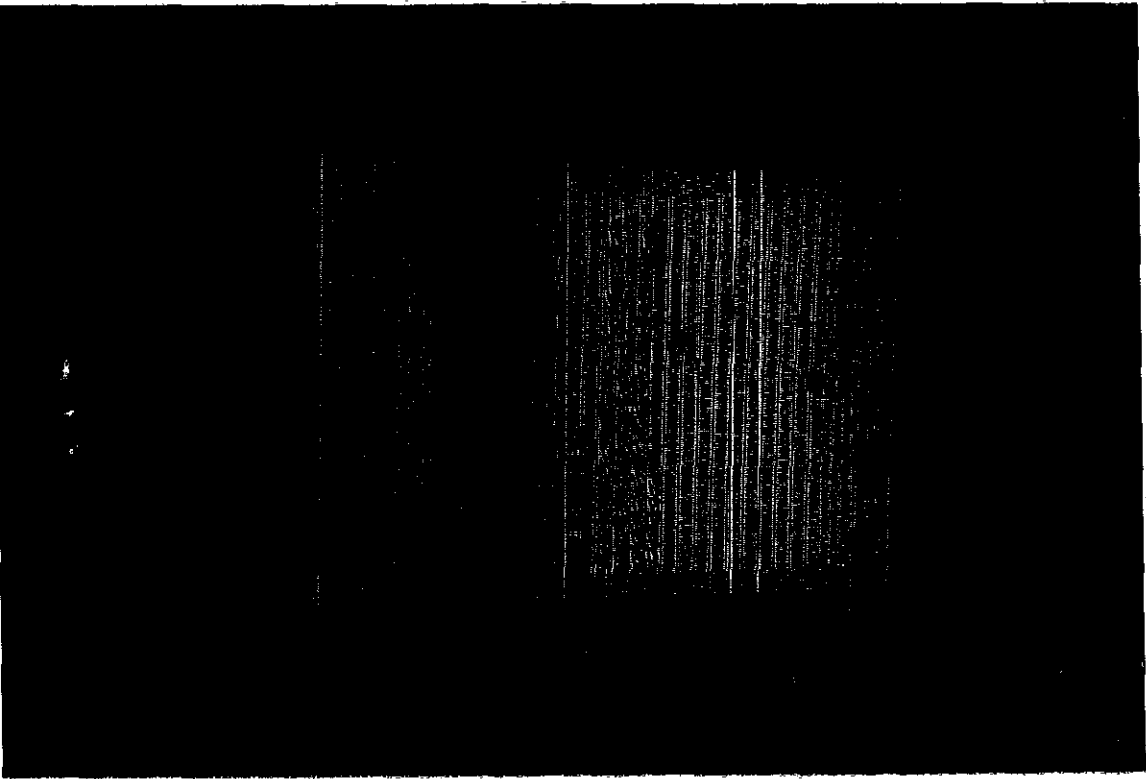
Honeygo Study Area Development Sub Areas

— The sub areas boundaries generally follow watershed / sewershed lines. Natural drainage courses may adjust boundaries.

Ex No 3

B. Florio Property - N/S of Cross Road - All buildings to be removed.

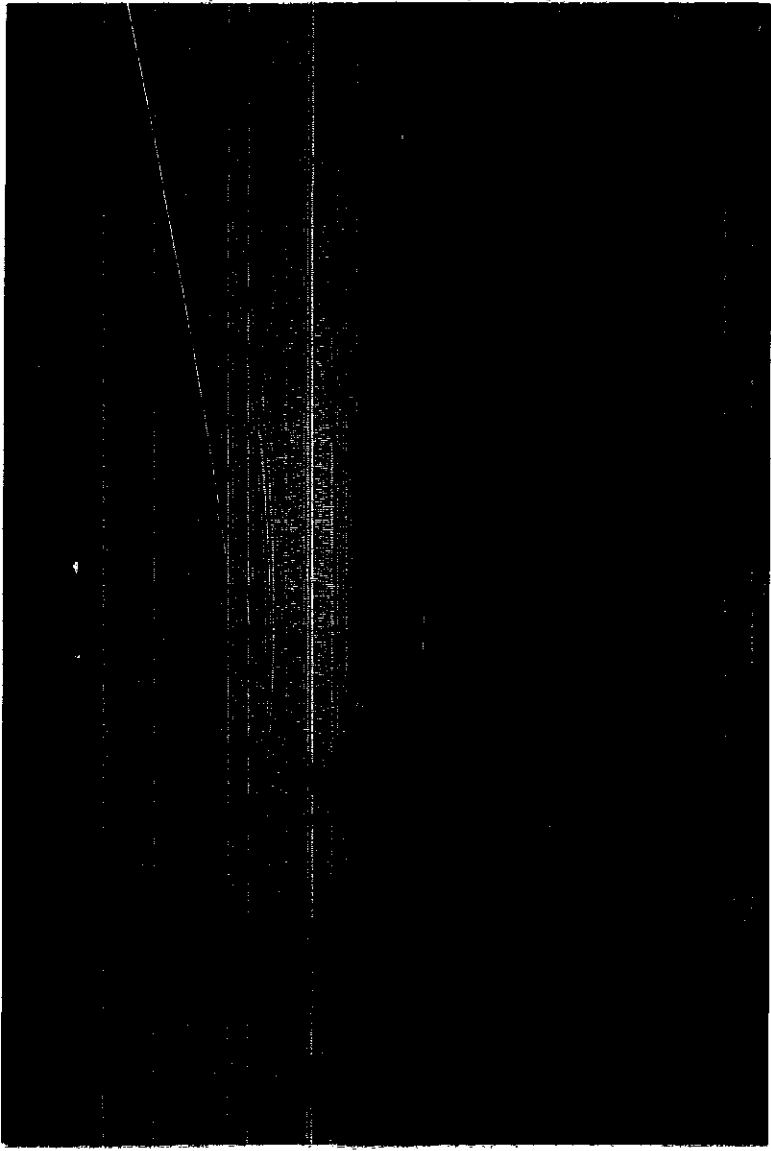
EX NO 2



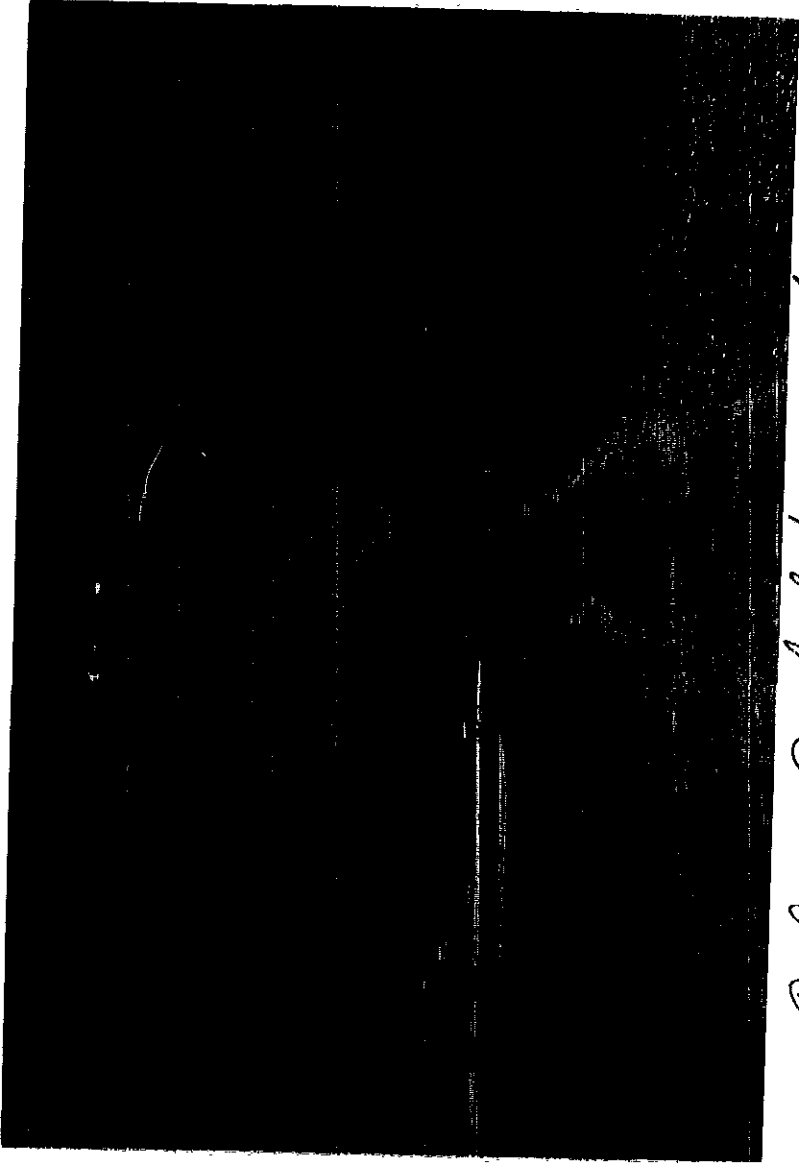
A. Jerning Sign - Case 99-331-5PH.

Florida Property.

EX 1602



C. Cross Road looking NW
Flower on right



D. Cross Road looking SE from
Flower

Ex No 2

E, Close up of buildings to be razed.

Ex Nov 2

F, Perry Hall Farm - S/S of Cross.
Road opposite Florida.

EXISTING CONTOURS

PROPOSED CONTOURS

EXISTING STRUCTURE

PROPERTY BOUNDARY

EXISTING TREE LINE

SOIL TYPES

WETLAND LIMIT

FOREST BUFFER LIMIT

PROPOSED 4' WIDE SIDEWALK

PROPOSED STREET LIGHT

PROPOSED LOT LINE

PROPOSED ROAD RIGHT-OF-WAY

PROPOSED BUILDING ENVELOPE

PROPOSED STREET TREE

PROPOSED LANDSCAPE SCREENING


SWM Design Summary					
Design Storm	Allowable Release Rate	Facility Inflow	Facility Discharge	Water Surface Elevation	Storage Volume (Ac. ft.)
2-Year	7.25 cfs	12.66 cfs	7.15 cfs	231.0 ft.	36 Ac. ft.
10-Year	19.81 cfs	28.20 cfs	19.81 cfs	233.3 ft.	66 Ac. ft.
100-Year	35.63 cfs	45.33 cfs	35.63 cfs	234.0 ft.	76 Ac. ft.

Surface Area:	20 Ac. ±
Structure Classification:	2, 20 Ac. ±
Watershed Area to Facility (ac):	18.5 Ac. ±
Level of Management Provided by Facility:	2, 10- & 100-year provided
extended duration provided for 1" 0.2 inch runoff for water quality	
Wastewater:	
Stream Class:	Class I
Stream Quality:	3300 ft
Flow:	10 cfs
Pressure:	100-pswg W/S Div.

	MINIMUM BUILDING SETBACK
From right-of-way of an alley	4 ft
From right-of-way of neighborhood street or court	10 ft
From right-of-way of arterial or collector road	40 ft
Minimum building-to-building setback	20 ft
Minimum rear yard setback	30 ft

SOIL SERIES DATA				
SYMBOL	DESCRIPTION	STRENGTH/RANKING	HOMESTIES W/O BENEFITS	HOMESTIES W/ BENEFITS
BIB	Baitville all loam 2%–5% slopes	Moderate: seasonally perched H ₂ O table	Slight	Moderate: seasonally perched H ₂ O table
Em	Edisto loam	Severe high H ₂ O table; poor natural drainage	Sweet; high H ₂ O table; poor natural drainage	Severe high H ₂ O table; poor natural drainage
F ₂	Faulington loam	Severe high H ₂ O table; poor natural drainage	Sweet; high H ₂ O table; poor natural drainage	Severe high H ₂ O table; poor natural drainage
ShB	Basaltine sandy loam; 2%–5% slopes	Moderate slope	Slight	Slight
WBG	Woodstown sandy loam; 2%–5% slopes	Moderate: seasonally high H ₂ O table; slope	Slight	Moderate: moderately high H ₂ O table

DATE		REVISIONS
DATE	2/28/94	PER COUNTY COMMENTS
Design		
Check		
Drawn		



ENGINEERS AND PLANNERS
NORTH PARK DRIVE
HIGHT VALLEY, MD 20636-3831
(410) 314-7100
TELEFAX (410) 314-7100

OWNER/DEVELOPER: ERMANNO FLORIO
13218 Dulane Valley Road
Glen Arm, Md. 21057-9611
(410) 477-2050

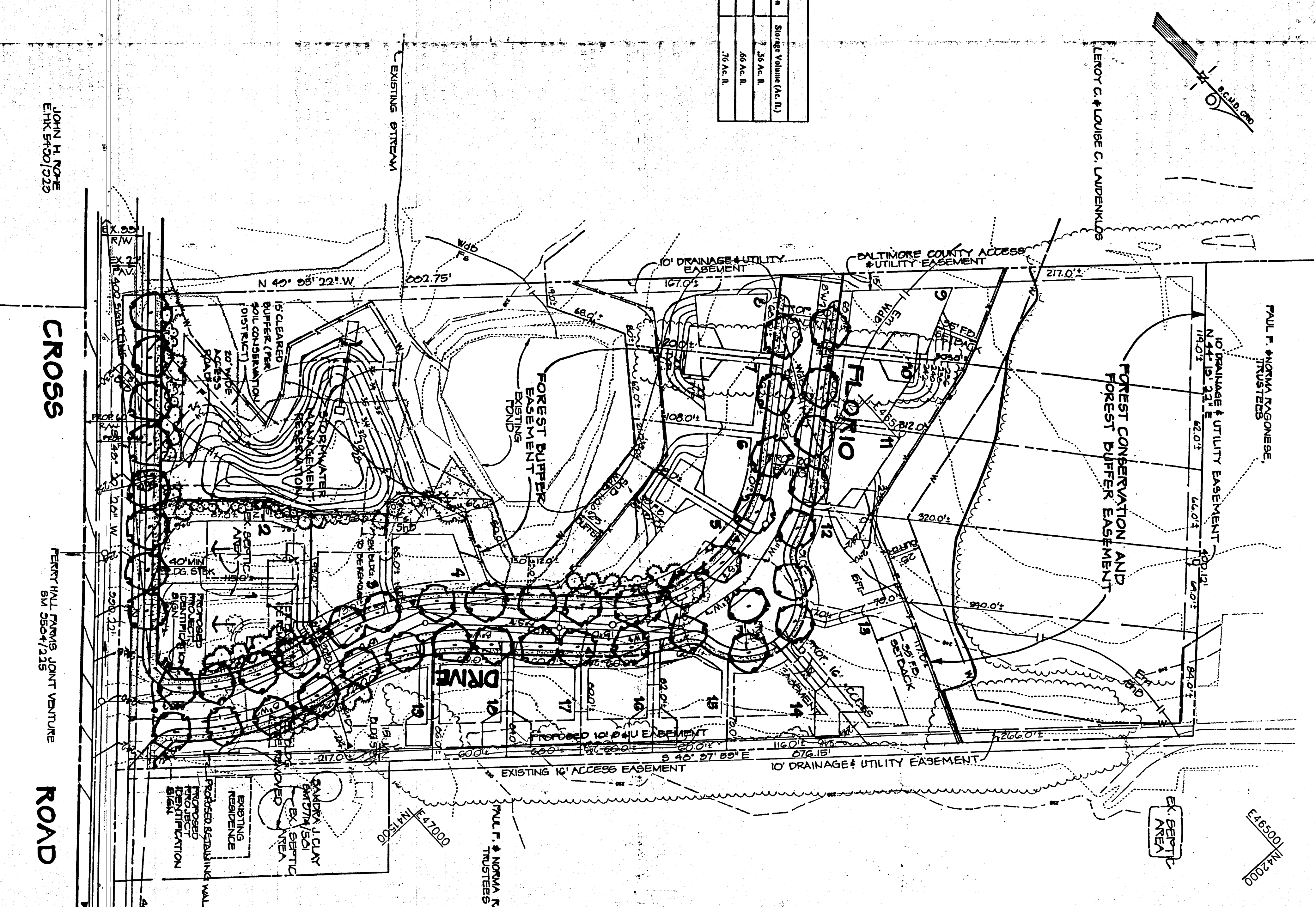
--	--

DEVELOPMENT	
ELECTION	

PLAN TO ACCOMPANY
FLORIO PROP

COMMISSION FOR SPECIAL HEARINGS
CITY
Councilmanic District 5

JOB NUMBER	DATE	SHEET
01-9507	2/18/50	11
	SCALE	OD
	1" = 50'	11



Pursuant to the zoning and development plan, rezonulations of Ball-
more County as contained within the R.C.T.A. and Shallicks #6 of Ball-
more County Code, the designating of the property and public hearing
thereon, the development plan shall be approved consistent with the com-
ments contained herein and the restrictions set forth hereinafter.

WHEREFORE, IT IS DEMANDD BY THE Planning Commissioner and Hearing
Officers, for Ballimore County that, 1994 of March, 1994 that the devel-
opment plan for the Public Property, Identified lands as Developer's
Schedule 1, be and is hereby APPROVED.

Any appeal of this decision may be taken in accordance with Sec-
tion 36-209 of the Ballimore County Code.

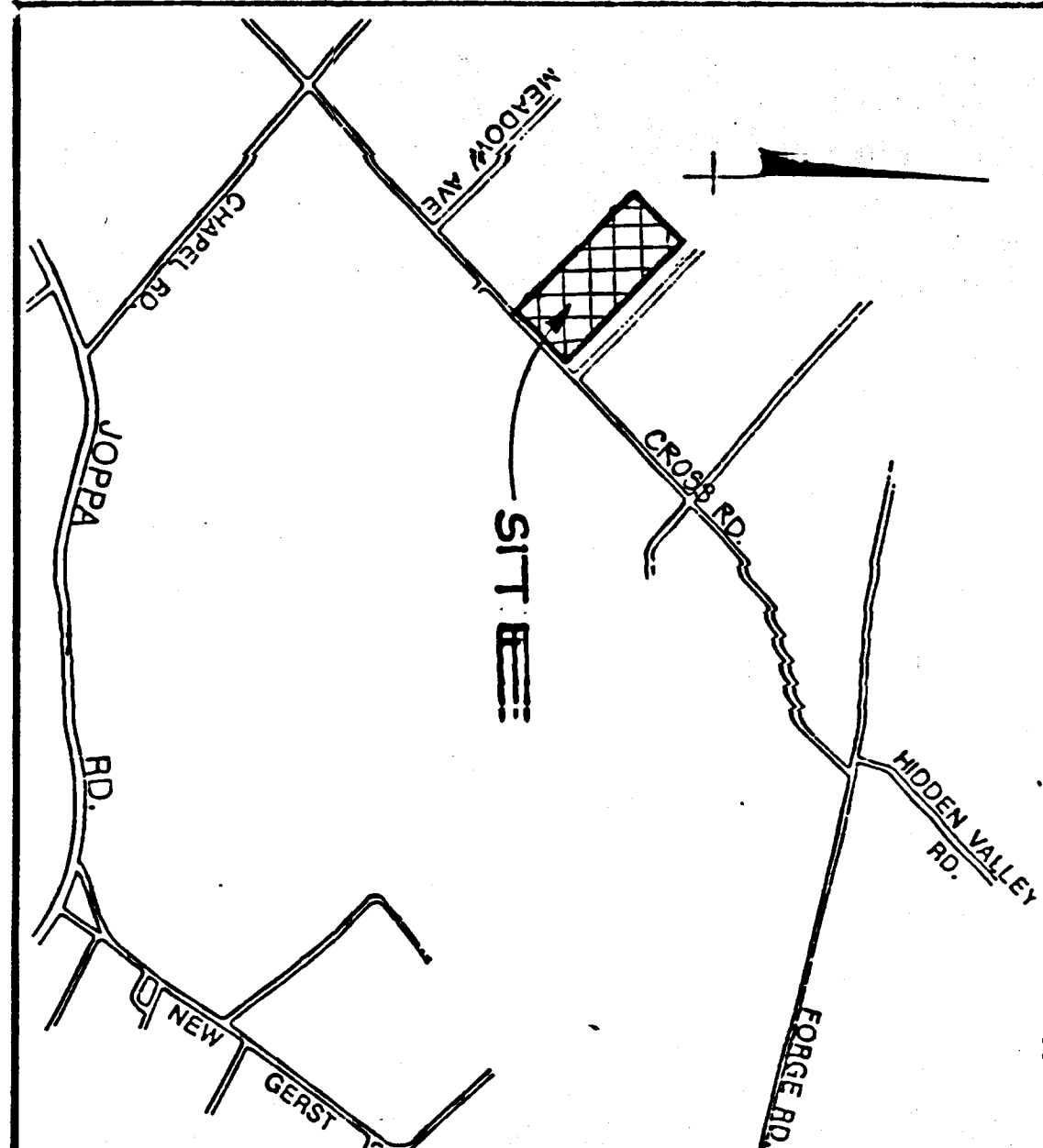
James E. Conroy
James E. Conroy
for Ballimore County

1.	Net Average: 8.0%		
2.	Current Long-Dm: 8.0%		
3.	Current Short: Single Family Residential		
4.	Current Short: Multi-Family Residential		
5.	Debt Maturities: Tax Rate 72, Parcel 100 - 8M \$330,008		
6.	Tax Account Number: 1181007223		
7.	Census Tract: 411304		
8.	Submarkets: 22		
9.	Density Calculations:		

Lot	Receptor ² emitted	Proposed
<ul style="list-style-type: none"> 3.5 dwelling/acre = 200 ft² lot 	19	
<ul style="list-style-type: none"> 38 		38
<ul style="list-style-type: none"> To be retained 		Fresh-Hill

	Required/Permitted	Proposed
Lots	• 3.5 dwellings/acre = 23 lots	19
Parking Spaces	• 2/lot = 66	38
Open Space	To be waived	Fee-in-lieu

18.	Estimated number of additional average daily trips (ADT's) for project: 189.
19.	
20.	
21.	
22.	
23.	
24.	
25.	
26.	
27.	
28.	
29.	
30.	
31.	
32.	
33.	
34.	
35.	
36.	
37.	
38.	
39.	
40.	
41.	
42.	
43.	
44.	
45.	
46.	
47.	
48.	
49.	
50.	
51.	
52.	
53.	
54.	
55.	
56.	
57.	
58.	
59.	
60.	
61.	
62.	
63.	
64.	
65.	
66.	
67.	
68.	
69.	
70.	
71.	
72.	
73.	
74.	
75.	
76.	
77.	
78.	
79.	
80.	
81.	
82.	
83.	
84.	
85.	
86.	
87.	
88.	
89.	
90.	
91.	
92.	
93.	
94.	
95.	
96.	
97.	
98.	
99.	
100.	



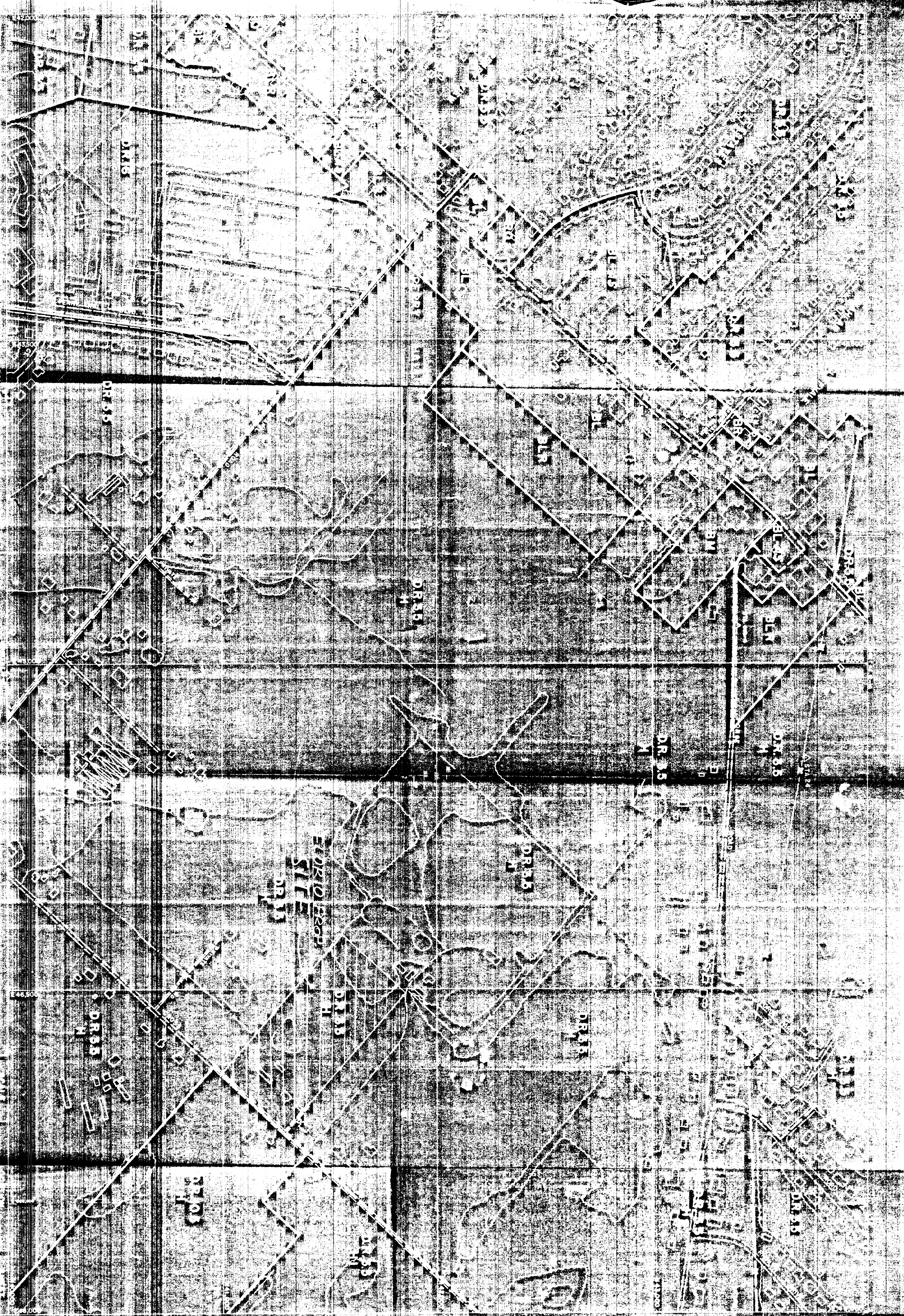
NOTE: →
1. Emano Pico, certify under oath that there are no delinquent accounts for any other development with respect to any of the following: the applicant, a person with a financial interest in the proposed development, or a person who will perform contractual services on behalf of the proposed development.

Emano Pico

OFFICE OF PLANNING AND ZONING	
Director of Planning	Date
Zoning Commissioner	Date

44-331-S 12- H

At No



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

DATE: JUNE 1981
BY: [illegible]
CHECKED BY: [illegible]
PERMITS: [illegible]
MC 1011

99-331-5 PM

